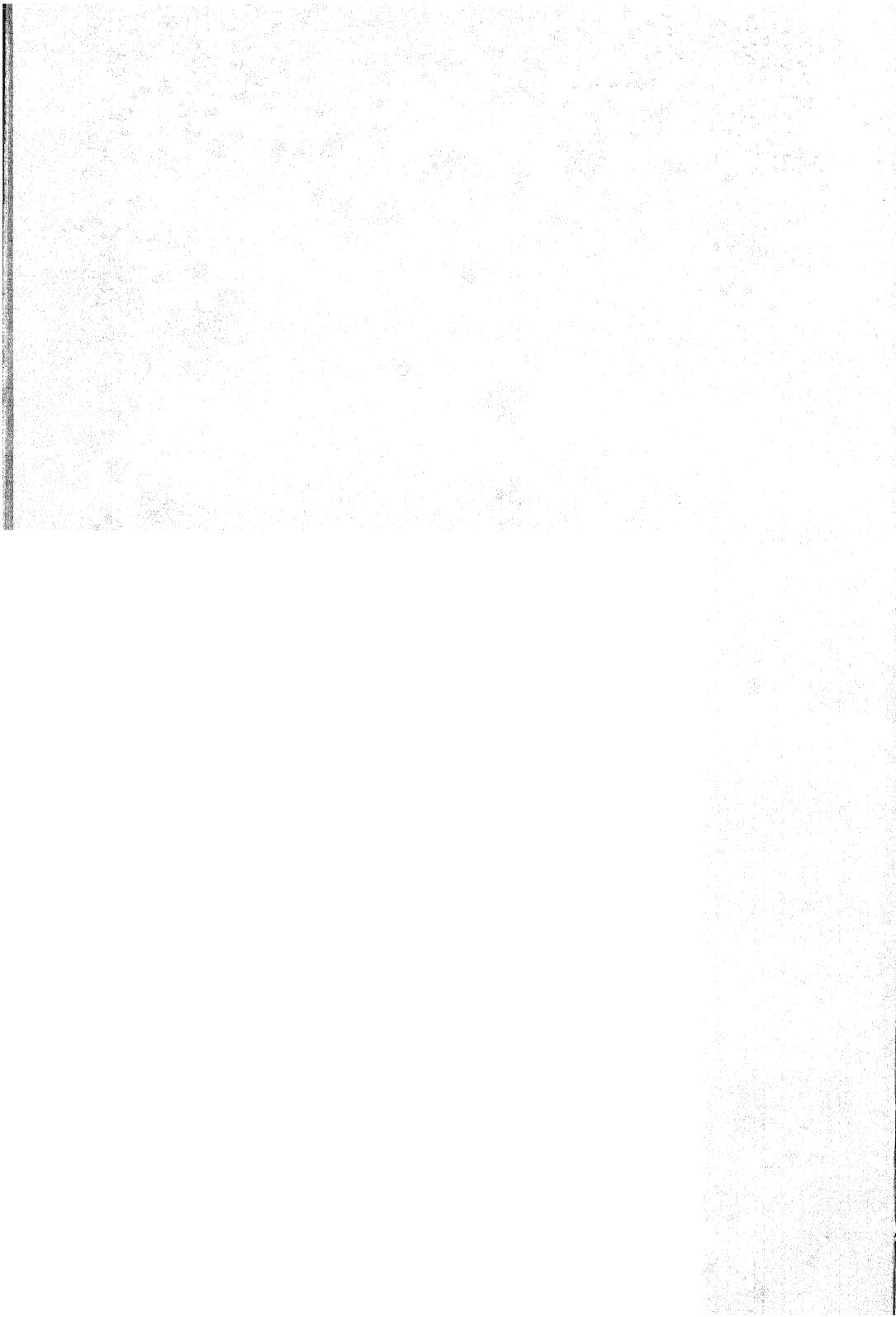


**LOCAL  
GOVERNMENT LAW  
AND  
ADMINISTRATION**

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**VOLUME V**



# **LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES**

By

THE RIGHT HONOURABLE THE  
**LORD MACMILLAN**  
A LORD OF APPEAL IN ORDINARY  
AND OTHER LAWYERS

**VOLUME V**  
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to  
**FERRIES**

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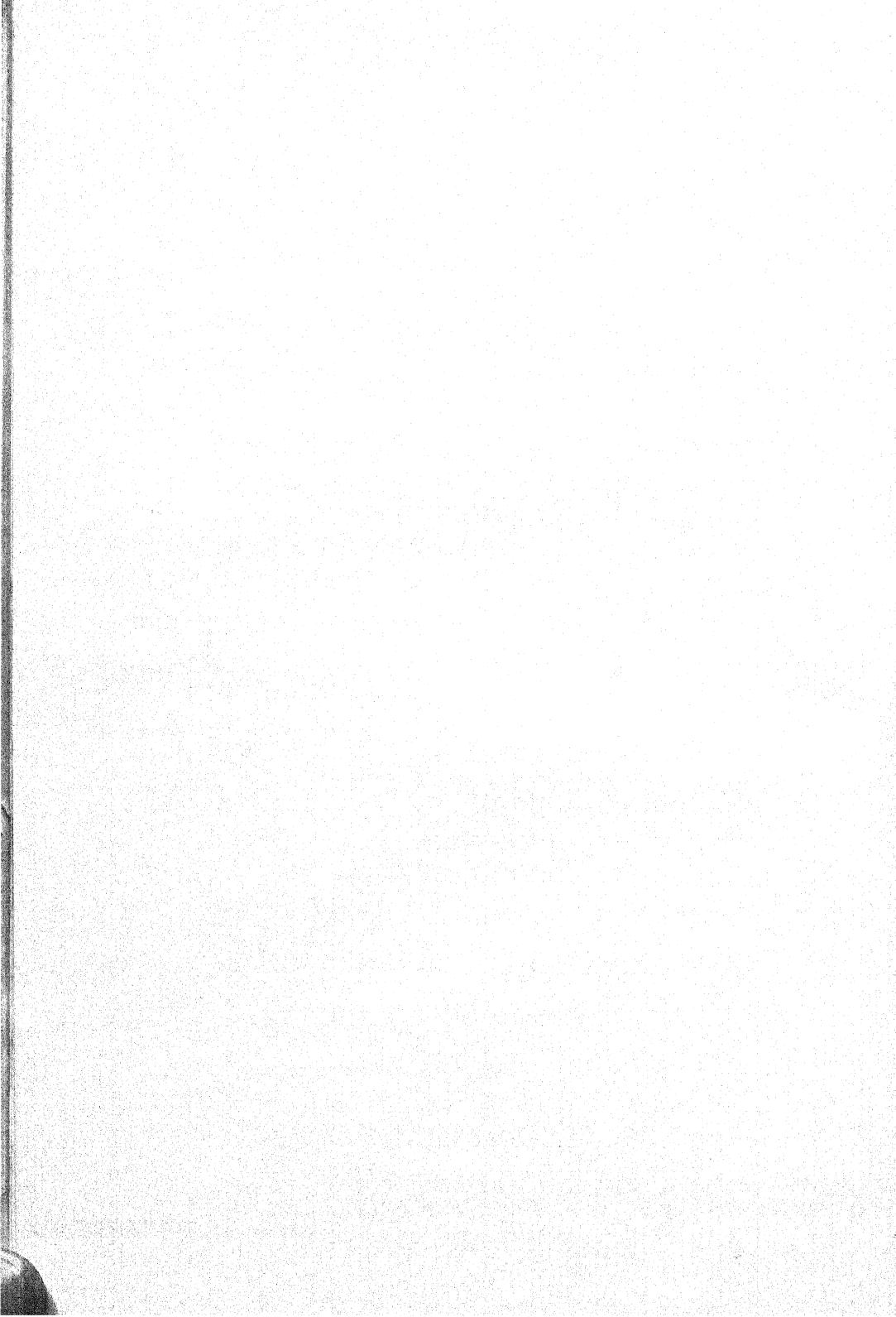
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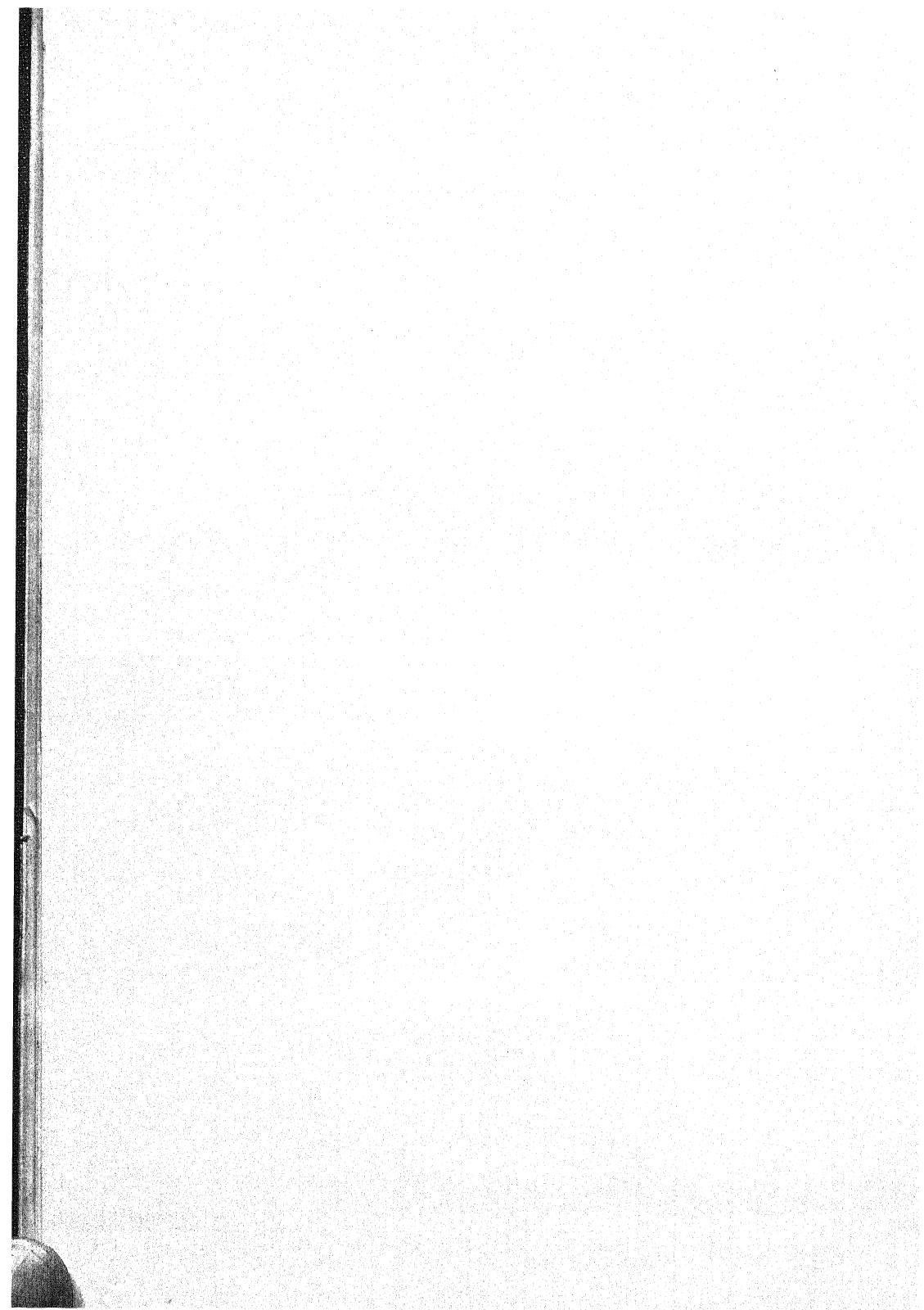


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Company .. . . . .	Co.
Corporation .. . . . .	Corpn.
Home Office .. . . . .	H.O.
Justices .. . . . .	JJ.
Limited .. . . . .	Ltd.
London County Council .. . . . .	L.C.C.
Local Government Act .. . . . .	L.G.A.
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## DISORDERLY HOUSES

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*Titles bearing on powers of control of public amusements are :*

BETTING ;	PUBLIC-HOUSE ;
BILLIARDS ;	RACECOURSES ;
CINEMATOGRAPHS ;	REGULATED INDUSTRIES ;
ENTERTAINMENTS, PROVISION OF ;	SUNDAY ENTERTAINMENTS ;
HIGHWAY NUISANCES ;	THEATRES.
MUSIC, SINGING AND DANCING ;	

**Classification.**—The term “Disorderly Houses” is applied in law to the following places: (1) brothels (*a*) ; (2) common gaming houses ; (3) common betting houses ; (4) unlawful places of entertainment ; (5) houses found to be kept open to persons who conduct themselves in such a way as to violate law and good order (*b*). [1]

**Position of Local Authorities.**—The subject of disorderly houses falls within the scope of a work on local government by reason of certain rights and obligations placed by statute upon local authorities. The first of these is the liability which was imposed on overseers by sect. 5 of the Disorderly Houses Act, 1751 (*c*), to pay, under certain conditions and limitations, the costs of prosecutions and of rewards to informers in proceedings for the suppression of disorderly houses ; and also by reason of the power which the overseers possessed under sect. 7 of the Disorderly Houses Act, 1818 (*d*), to undertake the prosecution of offenders.

The provisions as to licensing places of entertainment in sects. 2—4 of the Act of 1751 extended only to the cities of London and Westminster and places within twenty miles of them, but the remainder of the Act applies to England and Wales.

(*a*) A brothel is the same thing as a bawdy house (*Singleton v. Ellison*, [1895] 1 Q.B. 607 ; 15 Digest 756, 8140).

(*b*) *R. v. Berg* (1927), 20 Cr. App. Rep. 38 ; Digest (Supp.).

(*c*) 4 Statutes 361.

(*d*) *Ibid.*, 440.

Local authorities are also concerned as recipients of half the penalties imposed by sect. 9 of the Betting Act, 1853 (e), and by sect. 8 of the Gaming Houses Act, 1854 (f), and as having power to license certain places for public entertainment (g). [2]

*Extent of Powers under the Disorderly Houses Acts.*—Subject to one exception, the liability of the overseers to pay costs and rewards and the right to prosecute only arose when proceedings were taken in the manner prescribed by the Disorderly Houses Acts, 1751 and 1818, namely a common law prosecution by indictment upon the information of two inhabitant ratepayers. The exception was created by sect. 13 of the Criminal Law Amendment Act, 1885 (h), which extended the provisions for encouraging prosecutions for offences relating to brothels under the Disorderly Houses Acts to summary proceedings. The overseers were not concerned with other cases where the prosecution takes the form of summary proceedings for statutory offences relating to disorderly houses.

*Abolition of Overseers.*—In London the Council of each metropolitan borough acts as the overseers of every parish in their borough, and any document required to be signed by overseers may be signed by the town clerk (i). Similarly in the City of London, the Common Council act as the overseers of the parish of the City of London under sect. 11 of the City of London (Union of Parishes) Act, 1907 (k), and any document required to be signed by overseers may be signed by the town clerk or such other person as the Common Council may appoint in that behalf. In both instances, expenses are defrayed from the general rate instead of the poor rate and receipts are carried to the general rate.

Outside London, the powers and duties of overseers under sects. 5—7 of the Disorderly Houses Act, 1751, as extended by any other enactments were transferred to the rating authority (l) by sect. 5 and the First Schedule to the Overseers Order, 1927 (m). By the same provision, any notice under sect. 7 of the Disorderly Houses Act, 1818, as extended by any other enactment, is to be served on the clerk of the rating authority instead of the overseers. By sect. 13 of the order (n), expenses incurred in the performance of duties of overseers are to be defrayed from the general rate, or where the borough or district comprises more than one parish from the portion of the general rate levied on the parish. Any enactment authorising fines, fees or other receipts to be applied in aid of the poor rate is also adapted by sect. 13 of the Order so as to substitute for the poor rate the general rate or portion of it already mentioned. [3]

#### Proceedings under the Disorderly Houses Acts.—The keeping (o)

(e) 8 Statutes 1160.

(f) *Ibid.*, 1166.

(g) See *post*, p. 8.

(h) 4 Statutes 712.

(i) London Government Act, 1899, s. 11; 11 Statutes 1232.

(k) 14 Statutes 603.

(l) *i.e.* the council of each borough and district.

(m) S.R. & O., 1927, No. 55; 14 Statutes 772, 777.

(n) 14 Statutes 774.

(o) Special provisions relating to brothels are contained in the Criminal Law Amendment Acts, 1885 to 1922 (4 Statutes 706, 784, 850). Apart from these, a person who behaves himself as the master or mistress or person having the care or management of any brothel, gaming house or other disorderly house, is deemed to be the keeper, notwithstanding he be not the real owner (Disorderly Houses Act, 1751, s. 8; 4 Statutes 363). Thus the statute follows the common law in that the "keeping" of a disorderly house is not to be understood "of having or renting in point of property; but governing and managing a house in a disorderly manner."

of disorderly houses was, and still is, a misdemeanor at common law (*p*). The purpose of the Disorderly Houses Acts, 1751 and 1818 (*q*), was to facilitate and encourage the common law proceedings already available.

The procedure relating severally to various kinds of disorderly houses has been considerably supplemented by statute and is given later in this article under separate headings (*r*).

Under sect. 5 of the Disorderly Houses Act, 1751 (*s*), if two inhabitants of a parish or place, paying scot and bearing lot therein (*t*), give written notice to any constable (*u*) (or other peace officer of the like nature where there is no constable) of such parish or place of the keeping (see *ante*, note (*o*)) of any "bawdy-house, gaming house, or other disorderly house" in such parish or place, the constable or other officer must proceed by taking such ratepayers before a justice.

Upon the ratepayers making oath before the justice that they believe the contents of the notice to be true, and entering into a recognisance in the penal sum of £20 each to give or produce material evidence against the offender, the constable must enter into a recognisance of £30 to prosecute the offender with effect at the next general or quarter sessions (*a*), or at the next assizes, as the justices think meet. The penalty for failure on the part of the constable to enter into such recognisance or for wilfully neglecting to carry on the prosecution, is the forfeiture of the sum of £20 to each of the ratepayers giving the notice (*b*).

The constable having entered into such recognisance, the justice must forthwith issue his warrant to bring the accused before him, and must bind him over to appear at such sessions or assizes, there to answer such bill of indictment as may be preferred against him for such offence (*c*). The accused may also be required to give security for good behaviour in the meantime.

The rating authority must pay the constable the expenses of prosecution as ascertained (*d*) by two justices; and in the event of a conviction (*e*) they must pay to the two ratepayers the sum of £10 each.

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(*R. v. Williams* (1711), 1 Salk. 384; *R. v. Dixon* (1716), 10 Mod. Rep. 335; 14 Digest 73, 402, 403). So that the mere relationship of landlord and tenant, apart from the above-mentioned special provisions relating to brothels, does not make the landlord an accessory so as to render him liable as a "keeper" of a disorderly house (*R. v. Barrett* (1863), 9 Cox, C. C. 255; *R. v. Stannard* (1863), 9 Cox, C. C. 405; 15 Digest 754, 8130, 8131). Thus a servant acting as manager of a disorderly house in the absence of his master may be convicted of aiding and abetting in the keeping of the house (*Wilson v. Stewart* (1863), 3 B. & S. 913; 14 Digest 92, 616); and a wife may be indicted with her husband (*R. v. Williams*; *R. v. Dixon*, *supra*).

(*p*) *R. v. Higginson* (1762), 2 Burr. 1232; 15 Digest 754, 8129; *R. v. Berg* (1927), 20 Cr. App. Rep. 38; Digest (Supp.); see also 3 Co. Inst. 205.

(*q*) 4 Statutes 359, 440.

(*r*) See *post*, pp. 4 *et seq.*

(*s*) 4 Statutes 361.

(*t*) *I.e.* inhabitant ratepayers.

(*u*) An inspector of Metropolitan Police is not a parish constable or other peace officer (*Garland v. Ahrbeck* (1888), 5 T. L. R. 91; 15 Digest 755, 8138). The reward is not payable unless the parish constable or other peace officer prosecutes (Disorderly Houses Act, 1751, *supra*, s. 5; *Clarke v. Rice* (1818), 1 B. & Ald. 694; 15 Digest 755, 8135).

(*a*) Including Borough Sessions (*R. v. Charles* (1861), 31 L. J. (M. C.) 69; 15 Digest 755, 8139).

(*b*) Act of 1751, s. 7; 4 Statutes 363.

(*c*) *Ibid.*, s. 6; *ibid.*, 362. An indictment cannot be preferred unless the requirements of the Administration of Justice (Miscellaneous Provisions) Act, 1933, are complied with.

(*d*) Costs taxed *ex parte* are not "ascertained"; *Garland v. Ahrbeck*, *supra*.

(*e*) As to what amounts to "conviction" entitling the inhabitant ratepayers to reward, see *Jephson v. Barker* (1886), 3 T. L. R. 40; 14 Digest 496, 5465.

A neglect or refusal to pay these expenses and rewards will render the rating authority liable to forfeit (f) to the person entitled double the sum (g).

A copy of the ratepayers' written notice to the constable must be served on the clerk of the rating authority (h), who will also be summoned or have reasonable notice to attend before the justices. The clerk may then enter into recognisances instead of the constable, failing whom the constable must do so (h). The subsequent proceedings are by way of indictment (i). [4]

**Brothels.**—A brothel is a place to which persons of both sexes are allowed to resort for the purposes of prostitution (k). A house does not become a brothel unless there are at least two women using it for this purpose (l). A lodger's room used for entertaining and accommodating people for the same purpose is a brothel (m). A brothel is a place where men and prostitutes meet for immoral purposes, and it is immaterial whether indecent or disorderly conduct is or is not perceptible from the outside (n), or whether it is or is not a nuisance (o). It is immaterial whether the women were known as prostitutes or whether they received payment for acts of fornication or indecency (p). When several flats in a block of buildings under one roof are used for the purposes of prostitution the whole block may be a brothel (q). [5]

*Suppression of Brothels and Places where Prostitution is Knowingly Permitted.*—The common law procedure for the suppression of brothels has been considerably extended by statute. By sect. 13 of the Criminal Law Amendment Act, 1885 (r), any person who (a) keeps or manages or acts or assists in the management of a brothel; or (b) being the tenant, lessee (s), or occupier or person in charge (t) of any premises knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution (u); or (c) being

(f) The forfeiture is recoverable by action within six months (Disorderly Houses Act, 1751, ss. 13, 14; 4 Statutes 363).

(g) Act of 1751, s. 5; 4 Statutes 361.

(h) Disorderly Houses Act, 1818, s. 7 (4 Statutes 440) as amended by the Overseers Order, 1927.

(i) As to the procedure see s. 2 of the Administration of Justice (Miscellaneous Provisions) Act, 1933; 26 Statutes 81. The indictment cannot be removed by *certiiorari* (Disorderly Houses Act, 1751, s. 10).

(k) *Per WILLS, J.*, in *Singleton v. Ellison* (1895), 59 J. P. at p. 120; 15 Digest 756, 8140. See also Stephen's Dig. Crim. Law, 7th ed., p. 181; also *Winter v. Wolfe*, [1931] 1 K. B. 549; Digest Supp.; *R. v. Holland, Lincolnshire Justices* (1882), 46 J. P. 312; 15 Digest 754, 8133.

(l) *Singleton v. Ellison, supra*; *Caldwell v. Leech* (1913), 109 L. T. 188; 15 Digest 756, 8142. But the person in charge of a house used by one prostitute may now be convicted of knowingly permitting it to be used for habitual prostitution (Criminal Law Amendment Act, 1912, s. 4 (1); 4 Statutes 785; although a woman occupying premises alone for purposes of her own prostitution cannot be said to "permit" their use for this purpose (*Mattison v. Johnson* (1916), 85 L. J. (K. B.) 741; 15 Digest 756, 8141).

(m) *R. v. Pearson* (1706), 2 Ld. Raym. 1197; 15 Digest 754, 8128.

(n) *R. v. Rice* (1806), 10 Cox, C. C. 155; 15 Digest 754, 8132.

(o) *R. v. Holland, Lincolnshire Justices, supra*.

(p) *Winter v. Wolfe, supra*.

(q) *Durose v. Wilson* (1907), 71 J. P. 263; 15 Digest 757, 8143.

(r) 4 Statutes 712.

(s) The term "lessee" does not include a lessee who has sublet (*Sivior v. Napolitano*, [1931] 1 K. B. 636; Digest Supp.).

(t) Criminal Law Amendment Act, 1912, s. 4; 4 Statutes 785.

(u) The term "prostitution" includes the offering by a woman of her body commonly for acts of lewdness for payment, although there be no act or offer of an act of ordinary sexual connection (*R. v. De Munck*, [1918] 1 K. B. 635; 15 Digest 850, 9337; *Winter v. Wolfe, supra*).

the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel, is on summary conviction, liable to penalties. These penalties were increased by sect. 3 of the Criminal Law Amendment Act, 1922 (*a*), and now stand at a fine not exceeding £100 or imprisonment with or without hard labour for a term not exceeding three months ; and on a second or subsequent conviction (*b*) to a fine not exceeding £250 or to imprisonment with or without hard labour for a term not exceeding six months ; or in any such case, to both fine and imprisonment.

A person accused of a second or subsequent offence can elect to be tried by indictment (*c*) in which case he can be tried at quarter sessions (*d*).

On the conviction of the tenant or occupier of any premises of knowingly permitting them to be used as a brothel, the landlord may require the person so convicted to assign the lease or other contract under which the premises are held to some person approved by the landlord, and in the event of the person convicted failing to assign within three months, the landlord may determine the lease or other contract (*e*). The court which has convicted the tenant may grant the landlord a summary order for possession (*e*). Should the landlord fail to exercise his rights and subsequently during the subsistence of the lease or other contract another similar offence is committed in respect of the premises, he is to be deemed to have knowingly aided and abetted the commission of that offence unless he proves that he took all reasonable steps to prevent its recurrence (*f*). A landlord who determines a lease in the above manner and then grants another lease to the same person without inserting in the lease provisions for the prevention of a recurrence of the offence is deemed to have failed to exercise his rights under sect. 5, and an offence under the subsequent lease is to be deemed to have been committed during the previous lease (*g*). [6]

The procedure under the Disorderly Houses Acts, 1751 and 1818 (*h*), with the necessary modifications, is applied by sect. 13 of the Criminal Law Amendment Act, 1885 (*i*) to the summary procedure set up by that section. Thus prosecutions under the Disorderly Houses Acts for the suppression of brothels may now be by summary prosecution or on indictment (*k*). A prosecutor who has recourse to the preliminary steps specified in the Disorderly Houses Acts is entitled to the reward whether the prosecution be by summary procedure or on indictment (*l*). There is an appeal from a court of summary jurisdiction to quarter sessions (*m*). A licensed victualler convicted of permitting his premises to be a brothel

(*a*) 4 Statutes 850.

(*b*) Proof of previous conviction should not be given until after the verdict in a prosecution for a subsequent offence (*R. v. Huberty* (1905), 70 J. P. 6; 14 Digest 498, 5478).

(*c*) Summary Jurisdiction Act, 1879, s. 17; 11 Statutes 329.

(*d*) Criminal Justice Act, 1925, s. 18, Sched. I.; 11 Statutes 408, 422.

(*e*) Criminal Law Amendment Act, 1912, s. 5 (1); 4 Statutes 785; power to make summary orders is given by the Summary Jurisdiction Act, 1879, s. 34; 11 Statutes 342.

(*f*) Criminal Law Amendment Act, 1912, s. 5 (2).

(*g*) *Ibid.*, s. 5 (3).

(*h*) 4 Statutes 359, 440.

(*i*) *Ibid.*, 712.

(*k*) *R. v. Newton*, [1892] 1 Q. B. 648; 15 Digest 757, 8145.

(*l*) *Kirlein v. Hines* (1886), 54 L. T. 610; 15 Digest 757, 8144.

(*m*) Criminal Law Amendment Act, 1885, s. 13; 4 Statutes 712.

is liable to a fine of £20 and forfeits his licence and is disqualified for life from the grant of a licence (*n*). The harbouring of thieves or reputed thieves by a brothel keeper is a statutory offence with a penalty not exceeding £10 or two months' imprisonment in default of payment (*o*). A brothel may be kept by a *feme covert* as well as by a *feme sole* (*p*). The keeping of a brothel is a continuing offence (*q*). [7]

**Common Gaming Houses.**—A common gaming house may be either (1) a house in which all gaming is unlawful, though none of the games be unlawful in themselves (*r*) ; or (2) a house opened for the purpose of playing unlawful games (*s*). A house used on one occasion only for an unlawful game may not be a house opened for the purpose of playing unlawful games (*t*). [8]

**Unlawful Games.**—In addition to games played in unlawful (*u*) gaming houses, numerous enactments and authorities have declared the following to be games unlawful in themselves.

The baiting of animals (*a*), games of chance or chance and skill combined (*b*), lotteries (*c*), ace of hearts, pharaoh, basset, hazard (*d*), passage and all games invented or to be invented with dice or other device of a like nature (backgammon and games then played with backgammon tables excepted) and roulette, otherwise called roly-poly (*e*). [9]

**Procedure under the Gaming Acts.**—In default of any other evidence that a house is a common gaming house, it is sufficient to prove that such house is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players, exclusively of the others, or that the chances of any game played therein are not

(*n*) Licensing (Consolidation) Act, 1910, s. 77 ; 9 Statutes 1029.

(*o*) Prevention of Crimes Act, 1871, s. 11 ; 4 Statutes 676.

(*p*) *R. v. Williams* (1711), 1 Salk. 384 ; *R. v. Dixon* (1716), 10 Mod. Rep. 335 ; 14 Digest 73, 402, 403.

(*q*) *R. v. Burnby*, [1901] 2 K. B. 458 ; 15 Digest 757, 8147. See also *Onley v. Gee* (1861), 30 L. J. (M. C.) 222 ; 33 Digest 323, 377.

(*r*) *Ea parte Rogier* (1823), 2 Dow. & Ry. (K. B.) 431 ; 25 Digest 428, 286 ; *Jenks v. Turpin* (1884), 13 Q. B. D. 505 ; 25 Digest 423, 260 ; 1 Hawk. P. C. Ch. 32, s. 4, sub-s. 6 (8th ed., p. 693) ; 4 Bl. Com. 171.

(*s*) *Jenks v. Turpin, supra*. Gaming Act, 1845, s. 2 ; 8 Statutes 1146.

(*t*) *R. v. Davies*, [1897] 2 K. B. 199 ; 25 Digest 422, 254.

(*u*) Whether a particular game is unlawful or not is a question for the judge and not the jury ; *R. v. Davies, supra* ; *R. v. Kirby* (1927), 20 Cr. App. Rep. 12 ; Digest (Supp.).

(*a*) Metropolitan Police Act, 1839, s. 47 ; 4 Statutes 470 ; Town Police Clauses Act, 1847, s. 36 ; 4 Statutes 478 ; Protection of Animals Act, 1911, s. 1 (1) (c) ; 1 Statutes 374.

(*b*) *Jenks v. Turpin, supra, per Hawkins, J.*, at p. 521 ; The Gaming Act, 1845, *supra*, preamble. See also *Fairtlough v. Whitmore* (1895), 64 L. J. (Ch.) 386 ; 25 Digest 424, 261 ; *Morris v. Godfrey* (1912), 106 L. T. 890 ; 25 Digest 424, 267 ; *Pessers, Moody Wraith and Gurr, Ltd. v. Catt* (1913), 29 T. L. R. 381, C. A. ; 25 Digest 426, 276 ; *Di Carlo v. M'Intyre*, [1914] S. C. (J.) 60 ; 25 Digest 465, m ; *R. v. Peers* ; *R. v. Brown* (1917), 86 L. J. (K. B.) 797, C. C. A. ; 25 Digest 426, 275 ; *Bracchi Bros. v. Rees* (1915), 84 L. J. (K. B.) 2022 ; 25 Digest 426, 277 ; *R. v. Hendrick* (1921), 37 T. L. R. 447, C. C. A. ; 25 Digest 423, 255 ; *Bunton v. Miller*, [1926] S. C. (J.) 120 ; Digest (Supp.) ; *R. v. O.K. Social and Whist Club* (1929), 45 T. L. R. 570 ; C. C. A. ; Digest (Supp.) ; *R. v. Brennan* (1930), 47 T. L. R. 22, C. C. A. ; Digest (Supp.) ; *Daniels v. Pinks*, [1931] 1 K. B. 374 ; Digest (Supp.).

(*c*) The Gaming Act, 1738, preamble and s. 2 ; The Gaming Act, 1739, s. 9 ; 8 Statutes 1120–1123, 1125, 1126 ; Betting and Lotteries Act, 1934, s. 21 ; 27 Statutes 289.

(*d*) The Gaming Act, 1738, s. 2 ; 8 Statutes 1123.

(*e*) The Gaming Act, 1744, s. 2 ; *ibid.*, 1127. Only games played with backgammon tables at the time of the passing of the Statute are included within the scope of the exception.

alike favourable to all the players, including the banker or other person by whom the game is managed, or against whom the other players stake, play or bet, and every such house is to be deemed a common gaming house (f).

It is not necessary to prove that any person was playing for any money, wager, or stake (g).

There is a power of entry under a warrant on any premises suspected to be a common gaming house (h). If any cards, dice, etc., or other instruments of gaming are found on the premises when such entry is made, or about the person of any one found there, it is evidence, until the contrary appears, that the premises are used as a common gaming house, and that the persons found were playing therein, although not in fact appearing to be doing so when the entry was made (i); and the same presumption arises where officers lawfully entering are wilfully obstructed or delayed, or find contrivances for giving alarm, or for hiding evidences of gaming and the like (k). [10]

Heavy penalties can be inflicted upon the owner or keeper of any common gaming house, and every person having the care or management thereof, and also on every banker (l), croupier, and other person who acts in any manner in conducting the business of a common gaming house (m). But it is expressly provided that nothing in the section contained shall prevent any proceeding by indictment against the owner or keeper or other person having the care or management of the gaming house, though an indictment cannot be laid against a person who has already been summarily convicted for the same offence.

Persons concerned in gaming and giving evidence are to be exempt from prosecution (n).

It is an offence to keep public billiard tables or bagatelle boards without a licence (o).

The various pecuniary penalties under the Gaming Houses Act, 1854, are to be paid as to one-half to the informer and as to the remaining one-half to the overseers in aid of the poor rate of the parish in which the offence shall have been committed (p). As explained on p. 2, *ante*, the general rate, or where a borough or district comprises more than one parish, the portion of the general rate levied on the parish, has been substituted for the poor rate by sect. 13 of the Overseers Order, 1927 (q). [11]

**Common Betting Houses.**—The keeping of a betting house is not an offence at common law unless it amounts to a public nuisance. But by sect. 2 of the Betting Act, 1853 (r), all betting houses to which sect. 1 of the Act applies (s) are to be deemed common gaming houses

(f) Gaming Act, 1845, s. 2; 8 Statutes 1146.

(g) *Ibid.*, s. 5; *ibid.*, 1148.

(h) *Ibid.*, ss. 3, 6; *ibid.*, 1147, 1148.

(i) *Ibid.*, s. 8; *ibid.*, 1148.

(k) Gaming Houses Act, 1854, s. 2; *ibid.*, 1163.

(l) See *Derby v. Bloomfield* (1904), 91 L. T. 99; 25 Digest 424, 264.

(m) Gaming Act, 1845, s. 4; 8 Statutes 1147.

(n) *Ibid.*, s. 9; *ibid.*, 1149.

(o) *Ibid.*, s. 11; *ibid.*, 1150.

(p) Gaming Houses Act, 1854; s. 8; *ibid.*, 1166.

(q) 14 Statutes 774.

(r) S. R. & O., 1927, No. 55; 8 Statutes 1157.

(s) There are two offences created by the Act (*Bond v. Plumb*, [1894] 1 Q. B. 169; 25 Digest 443, 367), namely keeping a house, office, room or other place for the purpose of (a) betting with persons resorting thereto, and (b) receiving deposits

within the meaning of the Gaming Act, 1845 (*t*). Heavy penalties are imposed (*u*) and fines are to be applied, one-half to the informer and the remaining one-half in aid of the poor rate of the parish in which the offence is committed (*a*). The Act does not apply to any approved racecourse on the days on which horse races, but no other races, take place (*b*). Nor does it include as a place for betting an inclosure where bookmakers have no further rights than the rest of the public and do not use any apparatus such as a desk, stool, umbrella or tent (*c*). Although it is convenient to use the procedure under the Betting Act, 1853, the procedure under the Disorderly Houses Acts, 1751 and 1818, has not been repealed. **[12]**

**Unlawful Places of Entertainment. Common Playhouses.**—Apart from the statutory control mentioned later, a common playhouse is not a nuisance at common law, although it can become so by drawing together such a number of coaches or people as to prove generally inconvenient to adjacent places (*d*). **[13]**

**Unlicensed Music and Dancing Houses.**—In London and the home counties (*e*), it is an offence to keep any house, room, garden or other place for public dancing, singing, music or other entertainment of the like kind (*f*) without a licence (*g*), and an unlicensed place so kept is

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on bets. As to what is a "place" under this Act, see *Powell v. Kempion Park Racecourse Co.*, [1899] A. C. 143; 25 Digest 441, 358. Betting by means of totalisators on racecourse tracks for dogs is legalised, subject to restrictions, by Part I of the Betting and Lotteries Act, 1934; 27 Statutes 273.

(*t*) 8 Statutes 1146.

(*u*) Betting Act, 1853, s. 3; 8 Statutes 1158.

(*a*) *Ibid.*, s. 9; *ibid.*, 1160. See *supra*, as to the substitution of the general rate.

(*b*) Racecourse Betting Act, 1928, p. 1; 8 Statutes 1176.

(*c*) *Powell v. Kempion Park Racecourse Co.*, *supra*.

(*d*) See 2 Hawk. P. C. (8th ed.) 693, s. 7; *R. v. Betterton* (1695), 5 Mod. Rep. 142; *Lyons, Sons & Co. v. Gulliver*, [1914] 1 Ch. 631; 26 Digest 427, 428, 1472, 1475.

(*e*) The licensing authorities in London and the home counties for places kept for music and dancing are the councils of the respective counties and county boroughs and are appointed in the areas under-mentioned under the following statutes :

(1) *Administrative County of London* :

Disorderly Houses Act, 1751, ss. 2, 3; 4 Statutes 360, 361; L.G.A., 1888, s. 3 (v.); 10 Statutes 689; L.C.C. (General Powers) Act, 1915, ss. 14—16; 19 Statutes 356; L.C.C. (General Powers) Act, 1923, s. 16; 19 Statutes 357.

(2) *In so much of the administrative counties of Buckinghamshire, Hertfordshire, and Kent as lies within 20 miles of the Cities of London and Westminster, in the whole county of Essex, and in the county boroughs of Croydon, East Ham and West Ham* :

Home Counties (Music and Dancing) Licensing Act, 1926 (19 Statutes 363) as extended by the Essex County Council Act 1933 (23 & 24 Geo. 5, c. xlvi).

(3) *Administrative County of Middlesex* :

Music and Dancing Licences (Middlesex) Act, 1894; 19 Statutes 349.

(*f*) In the administrative County of London in addition to the places kept for public dancing, singing or music, a licence is now required for places, other than the Royal Albert Hall, kept for public boxing (L.C.C. (General Powers) Act, 1930; 23 Statutes 749). There are similar requirements in Essex, Middlesex and Surrey under recent private Acts.

(*g*) A licence for dancing does not include a licence for music (*Brown v. Nugent* (1872), L. R. 7 Q. B. 588; 42 Digest 919, 151). A room in a public house for which customers have not been charged admission is not kept for music if [a piano is provided to be gratuitously played by customers for their own amusement (*Brearley v. Morley*, [1899] 2 Q. B. 121; 15 Digest 759, 8172)]. But a place may be kept for music and dancing although no charge for admission is made; *Archer v. Willingrige* (1802), 4 Esp. 186; 15 Digest 757, 8149; *Frairing v. Messenger* (1867), 31 J. P. 423; 15 Digest 758, 8152). Temporary or isolated user may not amount to "keeping" (*Shutt v. Lewis* (1804), 5 Esp. 128; 15 Digest 758, 8163; *Gregory v. Tuff's* (1838), 6 C. & P. 271; 15 Digest 758, 8162; *Marks v. Benjamin* (1839), 5 M. & W. 565; 15 Digest 758, 8151; *Syers v. Conquest* (1873), 37 J. P. 342; 15 Digest 758,

to be deemed a disorderly house. Elsewhere in England and Wales no licence is required, unless either a local Act is in force, or the council have adopted Part IV. of the P.H.A. Amendment Act, 1890 (*h*). Theatres and other places licensed by the Crown are exempt from the provisions of the Disorderly Houses Act, 1751 (*i*). [14]

*Houses used for Public Entertainment on Sunday.*—Apart from the amendments of the law made by the Sunday Entertainments Act, 1932 (*k*), sect. 1 of the Sunday Observance Act, 1780 (*l*), declares that any house, room or other place opened or used for public entertainment or amusement, or for publicly debating on any subject whatsoever (*m*), upon any part of the Lord's Day called Sunday, and to which persons are admitted by the payment of money, or by tickets sold for money (*n*), is deemed a disorderly house or place. The keeper (*o*) is liable to forfeit the sum of £200 for every day that such house, etc., is so opened or used, to such person as will sue for the same. He is, also, punishable under the Disorderly Houses Act, 1751 (*p*).

Houses, etc., at which persons are supplied with refreshments at greater prices on Sundays than on week-days, are to be deemed houses, etc., to which persons are admitted by the payment of money, although the money be not there taken in the name of or for admittance, or at the time when persons enter into or depart from such houses, etc.; and so similarly are houses, etc., opened for public entertainment or amusement, or for public debate, on the Lord's Day, at the expense of subscribers or contributors to the carrying on of any such entertainment or amusement or debate, and to which persons are admitted by tickets issued to the subscribers or contributors (*q*). [15]

The Crown may remit in whole or in part any penalty, fine or forfeiture imposed or recovered under the Sunday Observance Act, 1780, for any offence under that Act, whether on indictment,

8156). But a place may be "kept" although not used exclusively for music or dancing (*Bellis v. Beal* (1797), 2 Esp. 592; 42 Digest 919, 144; *Gregory v. Tuffs*, *supra*). An ordinary dancing class does not require a licence because the dancing is not public (*Bellis v. Burghall* (1799), 2 Esp. 722; 15 Digest 757, 8148). A licence is required for a tent pitched on waste land should it be used for public music or dancing (*Farndale v. Bainbridge* (1898), 42 Sol. Jo. 192; 42 Digest 919, 147). If music and dancing form no more than a subsidiary part of the entertainment, no licence is required (*Fay v. Bignell* (1883), Cab. & El. 112; 42 Digest 919, 145). A licence is required for a skating rink where music is played (*R. v. Tucker* (1877), 2 Q. B. D. 417; 15 Digest 759, 8167).

(*h*) 18 Statutes 843.

(*i*) S. 4; 4 Statutes 361.

(*k*) 25 Statutes 921.

(*l*) 4 Statutes 379.

(*m*) Sacred music, and addresses although in furtherance of no established religion, are not an entertainment contrary to the Act of 1780 (*Baxter v. Langley* (1868), L. R. 4 C. P. 21; 15 Digest 759, 8173).

(*n*) The Statute may not apply when the admission was free, although a charge was made for reserved seats (*Williams v. Wright* (1897), 13 T. L. R. 551; 15 Digest 759, 8176).

(*o*) Any person who appears, acts or behaves, as master or mistress, or as the person having the care, government or management of any such house, etc., is to be deemed the keeper although he be not in fact the real owner or keeper (Sunday Observance Act, 1780, s. 2). A limited company is liable for the penalties under the Act, but the directors are not liable as keepers unless they acted as persons having the management of the house on the material Sunday (*Orpen v. Haymarket Capital, Ltd.* (1931), 145 L. T. 614; Digest (Supp.)). Neither the solicitor who acts as agent for the letting of a hall, nor the chairman of the Sunday meeting held therein were liable as keepers (*Reid v. Wilson and Ward*, [1895] 1 Q. B. 315; 15 Digest 759, 8177).

(*p*) 4 Statutes 359. (*q*) Sunday Observance Act, 1780, s. 2; 4 Statutes 380.

information, or summary conviction, or by action, or any other process (r).

Sect. 1 of the Sunday Entertainments Act, 1932 (s), allows the councils of counties and county boroughs, or any authority to whom such a council have delegated their powers of licensing, to grant conditional Sunday licences for holding public cinematograph entertainments, if such entertainments on Sundays were given in the area during the year ended October 6, 1931, or the section has been extended to the borough or district by an order approved by Parliament. Musical entertainments may also be licensed under sect. 3 of the Act (t) by the licensing authority for music and dancing. Sect. 4 of the Act declares that it shall be no offence under the Sunday Observance Acts, 1625 to 1780 (u), for any person to be concerned in keeping, etc. (1) any place allowed to be open on Sundays under the Act of 1932 for cinematograph or musical entertainment or (2) any museum, picture gallery, zoological or botanical garden, aquarium, or any place for a lecture or debate (a).

The Act of 1932 will be dealt with more fully in the title **SUNDAY ENTERTAINMENTS.** [16]

**London.**—(See also *ante*, pp. 2, 8). In London the local authorities which, as successors to the overseers, are concerned with the statutory rights and obligations above referred to are, in the City of London, the Common Council, and elsewhere in the county the metropolitan borough councils (b).

The provisions of the Disorderly Houses Act, 1751 (c), which are applicable only to the Cities of London and Westminster and any place within twenty miles thereof, have already been dealt with. Other enactments having a peculiar application to London are the Metropolitan Police Act, 1839, sect. 44 (d), under which any person who keeps any house or place of public resort in the metropolitan police district, where refreshments are sold or consumed, and permits drunkenness or other disorderly conduct therein, or unlawful games or gaming, or permits prostitutes or persons of bad repute to meet there, is liable to a penalty of £5 for each offence; and the City of London Police Act, 1839, sect. 32, by which the Commissioner of the City Police Force is made responsible for the abatement of gaming houses. Under that section a search warrant may be issued by a justice or by the Commissioner of Police authorising a superintendent of the City Police and constables to enter an alleged gaming house and to arrest all persons found therein and to seize gaming instruments, money and securities. Persons so arrested, if they acted in the conduct of the gaming house, are liable to a fine not exceeding £100 or to imprisonment, or if found on the premises without lawful excuse to a fine not exceeding £5. [17]

(r) Remission of Penalties Act, 1875 ; 4 Statutes 687.

(s) 25 Statutes 921.

(t) *Ibid.*, 924.

(u) The Sunday Observance Acts, 1625, 1677, 1780 ; 4 Statutes 321, 325, 379.

(a) Act of 1932, s. 4 ; 25 Statutes 924.

(b) See *ante*, p. 2, and London Government Act, 1899, s. 11 ; 11 Statutes 1232 ; City of London (Union of Parishes) Act, 1907, s. 11 ; 14 Statutes 603. The L.C.C. is the licensing authority for places kept for music and dancing, see *ante*, p. 8 (notes (e) and (f)).

(c) 4 Statutes 359.

(d) 9 Statutes 917. A similar provision for the City is made by s. 28 of the City of London Police Act, 1839 (2 & 3 Vict. c. xciv).

## DISPENSARIES

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*See also titles : CLINICS ;  
PUBLIC HEALTH ;  
TUBERCULOSIS.*

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**Preliminary Observations.**—The word dispensary, in its strict application, means a place where medicines, dressings and appliances suitable for medical and surgical treatment are kept and supplied in appropriate form by a medical practitioner or a dispenser to those who require them. In its wider application it includes accommodation for the examination of patients by medical practitioners, the giving of medical advice and the administration of medical or surgical treatment and nursing attention. A dispensary of the latter kind may also function as a centre from which medical practitioners and nurses visit patients in their homes. Associated with the work of a dispensary there may be non-medical assistance of the poorer patients and their families, either by direct provision of money or goods, or by bringing such patients and their families into touch with organisations existing specifically for the purpose. The staff of a dispensary may, therefore, comprise medical practitioners, nurses, dispensers and almoners or voluntary workers, as well as other employees engaged in the care and upkeep of the building. A dispensary may be housed in a separate building, or in a hospital or in some other building belonging to the organisation responsible for its management. In its wider use, the term is almost synonymous with the word clinic, but the medical and nursing provision at a dispensary is usually available for persons attending only as out-patients. See title CLINICS. [18]

**Outline of General Powers.**—Dispensaries, described under this designation, at which medical advice and treatment are given, are provided by local authorities (1) as adjuncts to the hospital treatment of the sick, both for the selection of cases for admission to hospital and for subsequent treatment and observation of discharged patients, and for the treatment of minor emergency cases ; or (2) as links in the chain of provision for tuberculous persons under tuberculosis schemes ; or (3) in connection with the outdoor medical care of the poor by the public assistance authority. Dispensaries provided merely for the dispensing of medicines, dressings and appliances, are an essential part of any hospital or institution in or at which the sick are treated. A clinic, for instance, may not only be itself a dispensary in the broader sense, but it may, and usually does, include, as a less important part

of its functions, the dispensing of medicines, etc., to the patients in attendance. Dispensaries may be provided by local authorities under the general power contained in sect. 131 of the P.H.A., 1875 (*a*), or under one or other of the Acts dealing with special aspects of the care of the sick. [19]

Sect. 131 of the P.H.A., 1875 (*a*), allowed the council of a borough or district to provide for the use of the inhabitants of their area hospitals or temporary places for the reception of the sick, but it has always been assumed that premises of the kind described in the Act may be available for out-patient treatment. This power was extended to county councils by sect. 14 (1) of the L.G.A., 1929 (*b*). It should be noted that dispensaries can be so provided for the use only of the inhabitants of the sanitary district or county by whose council they have been established. The council may build a dispensary, or combine with other councils to do so, or contract for the use of an existing dispensary, or enter into agreement with the managers of a hospital or dispensary for the treatment of patients on agreed terms. If poor law establishments have been appropriated to public health purposes by a county council or county borough council, by a scheme under sect. 5 (1) of the L.G.A., 1929 (*c*), and sect. 163 of the L.G.A., 1933 (*d*), the use of any dispensary transferred to the council, as part of the public health service, depends upon sect. 131 of the P.H.A., 1875. A council may consider that their responsibilities will be adequately discharged by an annual contribution to the funds of a dispensary or dispensaries under voluntary management. This course is authorised by the section last-mentioned (*dd*).

Under sect. 130 of the P.H.A., 1875 (*e*), the M. of H. may make regulations with a view to the treatment of epidemic, endemic or infectious disease, and under sect. 134 of the same Act (*f*), may make regulations for the provision of medical aid and accommodation whenever a formidable outbreak of such disease is threatened or exists. It would seem that regulations under either section may include provision for out-patient treatment at dispensaries, although no such regulation has hitherto been made relating in general to the classes of disease covered by sects. 130, 134 of the Act of 1875. Such regulations may be of general or local application.

A power and duty to provide dispensaries might, by regulations, be placed not only upon sanitary authorities but also upon county councils if the latter consent (*g*).

Dispensaries may also be set up by a sanitary authority with the Minister's sanction, under sect. 133 of the P.H.A., 1875 (*h*), as part of temporary measures for the supply of medicine and medical assistance for the "poorer" inhabitants of their areas. This latter power would not by itself be sufficient to permit the provision of outdoor medical assistance for the sick poor, at dispensaries or in their homes, regularly and exclusively by virtue of the P.H.A., 1875, instead of by way of poor relief under the Poor Law Act, 1930 (*i*). [20]

**Tuberculosis Dispensaries.**—These are the only institutions for the medical care of patients which have been uniformly provided by local

(*a*) 13 Statutes 678.

(*b*) 10 Statutes 891.

(*c*) *Ibid.*, 885.

(*d*) 26 Statutes 396.

(*dd*) 13 Statutes 678.

(*e*) *Ibid.*

(*f*) *Ibid.*, 680.

(*g*) P.H. (Prevention and Treatment of Disease) Act, 1913, s. 2; *ibid.*, 953.

(*h*) 13 Statutes 679.

(*i*) 12 Statutes 968.

authorities, usually county or county borough councils, under the name of dispensaries. A tuberculosis dispensary is defined as a non-residential institution approved by the M. of H. for the treatment of tuberculosis (*k*). In addition to the general power to establish dispensaries (*ante*, p. 12), the M. of H. may specially authorise county councils to provide and maintain such institutions (*l*), and these councils or sanitary authorities may make any arrangements for the treatment of tuberculosis, sanctioned by the Minister (*m*). These arrangements may include dispensary treatment. The Minister may also, by order, combine councils, with their consent, for the joint provision of arrangements for the treatment of tuberculosis (*n*). Any county or county borough council which had made such arrangements prior to 1921, for the treatment of tuberculous persons at or in sanatoria or dispensaries, as part of a scheme approved by the Minister was deemed to have made adequate arrangements for the purpose, but failure on their part to continue them, or on the part of other councils to make them, allowed the Minister himself to make adequate provision and recover the cost from the council concerned (*o*). The discontinuance in 1930 of *ad hoc* grants from the Exchequer towards the cost of tuberculosis schemes (*p*), has not removed the Minister's responsibility for approving any modification which an authority may desire to make in such a scheme, but, in circular 1072 of February 12, 1930, he has given a general authority for extension of the provision so long as it affects institutions, such as dispensaries, for whose establishment approval has been obtained. The approval of a dispensary may be subject to such conditions as the Minister may think fit (*q*), and in circular 1072 (*supra*) such conditions are stated to include the maintenance of records and submission of returns required by him, and the granting of facilities for officers of the Ministry at all times to inspect the institution and its records. [21]

A tuberculosis dispensary may be not only a centre for diagnosis, medical advice and out-patient treatment, but also for the administration of after-care, which is regarded as a part of treatment (*r*). Arrangements may accordingly be made at such institutions for the provision of extra nourishment and other non-medical assistance considered to be essential for the treatment of the patient or the protection of other members of the family from infection.

The staff of a tuberculosis dispensary may consist of medical officers, nurses, clerks, dispensers, almoners and other non-technical assistants or employees, subject to the conditions as to approval by the Minister already mentioned. The medical officer in charge is called a tuberculosis officer, who must hold prescribed qualifications (see title TUBERCULOSIS OFFICER), and if the nurses employed at a dispensary by a county or county borough council also act as visitors to the homes of persons suffering from tuberculosis, special

(*k*) The P.H. (Tuberculosis) Regulations, 1930, s. 2; S.R. & O., 1930, No. 572; 23 Statutes 446.

(*l*) National Insurance Act, 1911, s. 64 (2); 20 Statutes 465.

(*m*) P.H. (Prevention and Treatment of Disease) Act, 1913, s. 3; 13 Statutes 953.

(*n*) P.H. (Tuberculosis) Act, 1921, s. 5; *ibid.*, 972.

(*o*) *Ibid.*, s. 1; *ibid.*, 971.

(*p*) L.G.A., 1929, s. 85; 10 Statutes 937.

(*q*) P.H. (Tuberculosis) Act, 1921, s. 3; 13 Statutes 972.

(*r*) *Ibid.*, s. 2; *ibid.*

qualifications are also necessary. See titles **HEALTH VISITORS** and **TUBERCULOSIS** (s).

Because the inauguration of tuberculosis schemes was associated with a grant to county and county borough councils from the Exchequer of 50 per cent. of the expenditure, an arrangement which obtained until April, 1930 (*ante*, p. 13), dispensaries have been provided almost exclusively by these authorities. The general law, however, places no obstacle in the way of their establishment by sanitary authorities, who are, indeed, specifically empowered, on the advice of the M.O.H., to supply such medical and other assistance, facilities and articles required for the detection of tuberculosis or for preventing its spread, and a dispensary provided by the council may form the centre of their organisation (t). **[22]**

**Poor Law Dispensaries.**—There is no specific power or duty under the poor law to establish dispensaries outside London. It is, however, the duty of all county and county borough councils to provide the necessary relief for the lame, impotent, old, blind and such other persons as are poor and unable to work (u). Such provision includes medical advice and treatment which may conveniently be administered through a dispensary, if the M. of H. approves. Such councils possess power to acquire lands, including buildings, necessary for the exercise of their poor law functions (a), but the Minister is charged with the direction and control of all matters relating to the administration of poor relief, and it is desirable that his sanction should be obtained to any new departure in the policy of a council, such as the establishment of dispensaries might involve (b). Instead of establishing a dispensary under the Poor Law Act, 1930, a council may, under sect. 67 of that Act (c), contribute by annual subscription, with the Minister's consent, to a dispensary under voluntary administration. **[23]**

**Dispensaries for Supply of Medicines, etc.**—As already mentioned (*ante*, p. 11), such dispensaries are commonly associated with institutions primarily established for giving medical advice and treatment. Dispensaries exclusively for dispensing medicines, dressings, appliances, etc., are usually adjuncts to the organisation of outdoor medical relief. If a council desire to centralise the storage and supply of drugs, dressings, etc., for patients attending hospitals, clinics and medical dispensaries under their administration, they would appear to be able to do so under the power to provide such institutions (*ante*, p. 12), of which the dispensary is to be regarded as an integral part. In the event of such an emergency arising as would, in the opinion of the M. of H., justify the temporary organisation by the council of a borough or district of a supply of medicines and medical assistance for the poorer inhabitants of their area (d), the provision of a dispensary for the

(s) L.G. (Qualifications of Medical Officers and Health Visitors) Regulations, 1930; S.R. & O., 1930, No. 69.

(t) P.H. (Tuberculosis) Regulations, 1930, s. 12; S.R. & O., 1930, No. 572; 23 Statutes 450.

(u) Poor Law Act, 1930, s. 15; 12 Statutes 978.

(a) *Ibid.*, s. 110; *ibid.*, 1028; L.G.A., 1933, ss. 157, 159; 26 Statutes 391, 392.

(b) Poor Law Act, 1930, s. 1; 12 Statutes 968.

(c) 12 Statutes 1001.

(d) P.H.A., 1875, s. 133; 18 Statutes 679.

purpose would appear to be permissible under their general power to acquire buildings and employ staff for the necessary discharge of their functions (e). [24]

**London.**—The metropolitan borough councils and the Common Council of the City have general powers under sect. 75 of the P.H. (London) Act, 1891 (f), to provide temporary or permanent hospitals, but these powers are not commonly exercised, because in London hospitals for infectious disease are provided and maintained by the L.C.C. (g) and for that purpose themselves to build hospitals, or to contract for the use of hospitals, or to agree with any person having the management of a hospital for the reception of sick persons therein. They may also, under sect. 77 of that Act, with the sanction of the Minister of Health, provide, or contract with any person to provide, a temporary supply of medicine or medical assistance for the poorer inhabitants of their districts. The L.C.C. have the same powers in this respect as county councils outside London (g).

With regard to poor law dispensaries, the Poor Law Act, 1930, contains special provisions applicable to London (h). Under sect. 127 of that Act the M. of H. may by order direct the L.C.C. to provide one or more dispensaries, and for that purpose either to purchase, hire or build one or more buildings of such nature and size as the Minister may think fit or to adapt part of a workhouse. Under sect. 128 (1), the L.C.C. must in such case provide proper places where poor law medical officers may see such of the sick poor as attend there for advice. Under sect. 128 (2), the council may also be required to provide such a place if they provide a dispensary otherwise than in compliance with a requirement of the Minister, and the poor law medical officers, or their authorised substitutes, must attend at the dispensary during the times fixed by the council with the approval of the Minister. Under sect. 129, the council must appoint proper persons as dispensers of medicine and may appoint other officers and servants, whose duties, qualifications, number and salaries will be such as the Minister may approve or by order direct. Sect. 130 relates to the provision by the council of medicines, appliances and requisites for the care and surgical treatment of the sick poor relieved out of the workhouse, and sect. 131 enables the council, with the consent of the Minister, to enter into an arrangement with any dispensary within the county for the reception and treatment therein of poor persons in receipt of relief. See also title TUBERCULOSIS. [25]

(e) L.G.A., 1933, ss. 106, 107, 157; 26 Statutes 361, 362, 391.

(f) 11 Statutes 1070.

(g) As successors to the Metropolitan Asylums Managers. See s. 166 of the Poor Law Act, 1927 (now repealed), s. 80 of the P.H. (London) Act, 1891; 11 Statutes 1071; s. 18 of the L.G.A., 1929; 10 Statutes 895.

(h) Ss. 127—131; 12 Statutes 1033, 1034.

# DISPOSAL AND UTILISATION OF LAND

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As to Disposal and Utilisation of Corporate Lands of Municipal Corporations,  
*see title CORPORATE LANDS*; and *see also title APPROPRIATION OF LAND*.

## GENERAL PRINCIPLES

Land acquired for a specific statutory purpose must be used for that purpose, and a local authority have no power to apply the land permanently to another purpose which is inconsistent with the original purpose, even though the land cannot possibly be wanted for the original purpose (a). This is subject to any express legislative sanction for user for a different purpose, such as that contained in sect. 163 of the L.G.A., 1933 (b), whereby a local authority may, with the sanction of the M. of H., appropriate land not required for the original purpose

(a) *A.-G. v. Hanwell U.D.C.*, [1900] 2 Ch. 377 ; 33 Digest 8, 1, where it was held that land acquired for sewage purposes under the P.H.A., 1875, could not be used as a site for a smallpox hospital. A distinction was drawn as to temporary beneficial user of land by letting it or a temporary user by defendant council themselves, per Lord ALVERSTONE, M.R., at pp. 384, 385.

(b) 26 Statutes 396 ; and see *post*, p. 30 ; and title APPROPRIATION OF LAND.

for any other purpose approved by the Minister for which the local authority are authorised to acquire land. But where land has been acquired for certain purposes and only part of the land so acquired is immediately required for the same purposes, the remainder can in the interim be used for other lawful purposes such as a recreation ground, provided care is taken to prevent any rights being acquired over it by the public or otherwise which would prevent or interfere with its ultimate use when required for the original purpose (c). As to a temporary beneficial user by letting (d), it would appear that the principle enunciated would permit short lettings for agricultural or other tenancies which do not prevent the ultimate user of the land for its statutory purpose. Such lettings are in accordance with the common practice amongst local authorities, care however being taken to provide in the letting agreement that possession may be resumed on short notice and also that the term is such as to secure that no responsibility arises for the payment of further compensation for improvements under the Agricultural Holdings Act, 1923 (e), e.g. that the tenancy does not amount to a tenancy from year to year.

[26]

#### LETTING OR LEASING OF LAND GENERALLY

County councils, borough councils and district councils may, under sect. 164 of the L.G.A., 1933 (f), subject to the provisions referred to below, let any land they may possess (g), with the consent of the M. of H. for any term and without such consent for a term not exceeding seven years. The former power under sect. 177 of the P.H.A., 1875, (h), had been applied to county councils by sect. 65 of the L.G.A., 1888 (i), but both sections are repealed by the L.G.A., 1933 (k). It is to be noted that the words of sect. 177 of the P.H.A., 1875, relating to leasing lands by a local authority "as and when they can conveniently spare the same", which had given rise to doubt as to the length of lease permissible, are not reproduced in sect. 164 of the L.G.A., 1933.

(c) *A.-G. v. Teddington U.D.C.*, [1898] 1 Ch. 66; 36 Digest 251, 39, where land not immediately required for sewage purposes under the P.H.A., 1875, was used temporarily as a recreation ground. A mound and trench for deposit of house refuse on the land were not justified as an interim user, per ROMER, J., at p. 72.; see also *A.-G. v. Sunderland Corpn.* (1876), 2 Ch. D. 634, C. A.; 36 Digest 251, 33; *A.-G. v. Southampton Corpn.* (1859), 29 L. J. Ch. 282; 36 Digest 252, 42; *A.-G. v. Pontypridd U.D.C.*, [1906] 2 Ch. 257; 33 Digest 9, 5; *A.-G. v. Westminster City Council*, [1924] 2 Ch. 416; 38 Digest 227, 586; and *A.-G. v. Sunderland Corpn.*, [1929] 2 Ch. 436; [1930] 1 Ch. 168; Digest (Supp.).

(d) See also *A.-G. v. Hanwell U.D.C.*, note (a), *ante*, p. 16, and opinions referred to in Lumley's Public Health, 10th ed., p. 444, as to the temporary letting of land for allotments being within the competence of a local authority in their capacity as owners apart from express statutory authority; and also temporary letting of land acquired for pleasure grounds as additions to private gardens.

(e) See 1 Halsbury (2nd ed.) 351. As to compensation for disturbance, see s. 12 (7) (e); 1 Statutes 89.

(f) 26 Statutes 397.

(g) As to whether the consent of the Minister is needed for letting sporting and fishing rights, see opinion of M. of H. that it is needed, referred to in Lumley's Public Health, 10th ed., p. 444, in the notes to the repealed s. 177 of the P.H.A., 1875. See that page also for view as to strong evidence required by the Minister for letting on long leases.

(h) 13 Statutes 701.

(i) 10 Statutes 739.

(k) L.G.A., 1933, s. 307 and Sched. XI., Parts I. and III.; 26 Statutes 469, 516, 518.

Parish councils, and where in a rural parish there is no parish council, the representative body of the parish with the consent of the parish meeting, may let any land vested in them other than land held for charitable purposes, with the consent of the M. of H., or, where the term of letting does not exceed one year, without the consent of the Minister (*l*). Under the section land held for charitable purposes may be let with such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1925, as amended by the Board of Education Act, 1899, for the sale of charity estates; but no consent or approval is required if the letting is for the purpose of allotments under the Allotments Acts, 1908 to 1931.

The powers of letting and leasing land above referred to are not to affect any provisions as to the disposal of land contained in any of the enactments set out in the Seventh Schedule to the L.G.A., 1933 (*m*), or any statutory order made thereunder or the application of any capital money arising from such disposal, or, in so far as any of those enactments or orders contains provisions relating to the disposal of land or the application of capital money arising from land, to empower a local authority to effect any transaction which might be effected under those provisions otherwise than under those provisions and in accordance therewith (*n*). A letting or lease of land therefore which can be carried out under any of the enactments or orders referred to must be carried out under and in accordance therewith; nor do the powers of letting or leasing authorise any disposal of any ancient monument within the meaning of the Ancient Monuments Acts, 1913 and 1931 (*o*), or a lease in breach of any trust, covenant or agreement binding upon the local authority (*p*).

Capital money received as the result of letting, sale or exchange of land by a local authority, other than a parish council, is to be applied in such manner as the M. of H. may approve towards the discharge of any debt of the local authority or otherwise for any purpose for which capital money may properly be applied (*q*). Where, however, the land is parish property vested in a borough or district council on behalf of a parish in their area, capital money is to be applied in such manner as the Minister may approve towards the discharge of any debt of the parish or otherwise for the permanent advantage of the parish (*q*). The Minister may also direct an adjustment in the accounts of the local authority (*r*).

As to any deficiency or loss incurred in connection with the rents and profits of land due to negligence or misconduct, and the district auditor's power to surcharge, reference should be made to the provisions of sect. 228 and other sections in Part X. of the L.G.A., 1933 (*s*).

**[27]**

(*l*) L.G.A., 1933, s. 169 (26 Statutes 399). And see Interim Report of Local Government and Public Health Consolidation Committee, Cmd. 4272/1933, at p. 87, reference to clause 166.

(*m*) See *post*, p. 22, note (*q*).

(*n*) L.G.A., 1933, s. 179 (*g*) ; 26 Statutes 404.

(*o*) 12 Statutes 392 ; 24 Statutes 296. The statutes cited in s. 179 (*b*) of the L.G.A., 1933, are the Ancient Monuments Acts, 1913 and 1930 ; it is assumed that the Ancient Monuments Acts, 1913 and 1931 are referred to.

(*p*) L.G.A., 1933, s. 179 (*b*) and (*d*).

(*q*) *Ibid.*, s. 166 ; 26 Statutes 397. As to parish councils, see *post*, p. 22.

(*r*) See *ibid.*, s. 166 (*2*).

(*s*) See also title SURCHARGE.

### LETTING OR LEASING OF LAND UNDER PARTICULAR STATUTES

Some of the groups of Acts mentioned in the Seventh Schedule to the L.G.A., 1933, do not expressly authorise the letting of surplus land (*t*), although they authorise a sale of land. As the policy of the Lands Clauses Acts is that superfluous land should be sold, it is not certain that a power of letting for a term of years would be covered by the power of sale.

**Education Acts, 1921 to 1933.**—Leases may be made of the whole or any part of any land or schoolhouse belonging to a local education authority for the purposes of elementary education which may not be required by that authority, in accordance with the provisions of the Charitable Trusts Acts, 1853 to 1894, with the substitution in those Acts of the Board of Education for the Charity Commissioners (*u*). [28]

**Military Lands Acts, 1892 to 1903 (*a*).**—Land may be purchased by a county or borough council on behalf of a volunteer corps (*b*) and may be leased to such a corps for a period not exceeding 99 years (*c*). If it is held by a council on behalf of a volunteer corps, the council may let the land in any manner consistent with the use thereof for military purposes (*d*). Any person, body of persons or authority holding land for public purposes may lease such land to a Secretary of State or a volunteer corps for military purposes for any term not exceeding twenty-one years (*e*), subject to this, that the lease ceases to have effect if the land ceases to be used for military purposes, *i.e.* where there has not been such user for a period of one year and a certificate of such non-user is given by a Secretary of State (*f*). Where such a lease has been granted, a bye-law made in respect of the land by the Secretary of State must not be inconsistent with the terms of the lease, and the lease may provide that such bye-laws shall be made with the consent of the lessor or made by the lessor with the approval of the Secretary of State (*g*). [29]

**Public Libraries Acts, 1892 to 1919.**—A library authority may let a house or building, or any part of it or any land vested in them for the purposes of the Public Libraries Act, 1892, which is not at the time of such letting required for those purposes, but must apply the rents and profits thereof for the purposes of the Act (*h*). [30]

(*t*) *E.g.* The Electricity (Supply) Acts, 1882 to 1933, and the Light Railways Acts, 1896 and 1912.

(*u*) Education Act, 1921, s. 115; 7 Statutes 192; and see *post*, pp. 22, 24, 25, as to the provisions of the Charitable Trusts Acts, 1853 to 1894.

(*a*) In connection with lands held for or leased to volunteer corps, reference should be made to the Territorial and Reserve Forces Act, 1907, s. 29 (1) and s. 29 (3) (e) (17 Statutes 292, 293) providing for the transfer by Order in Council to the Territorial Army of volunteer corps and to county associations of land acquired by county and borough councils. See also title MILITARY LANDS.

(*b*) Under the Military Lands Act, 1892, s. 1 (3); 17 Statutes 575; and see Military Lands Act, 1903, s. 1; *ibid.*, 600.

(*c*) Military Lands Act, 1900; s. 1; *ibid.*, 597.

(*d*) Military Lands Act, 1892, s. 3; *ibid.*, 578.

(*e*) *Ibid.*, s. 11 (1); *ibid.*, 580. Paras. (b) and (d) of the sub-section are repealed by the L.G.A., 1933, Sched. XI. and s. 307. See also Military Lands Act, 1903, s. 1, *supra*.

(*f*) Military Lands Act, 1892, s. 11 (2) and s. 12; 17 Statutes 580, 581.

(*g*) *Ibid.*, s. 18; *ibid.*, 583.

(*h*) Public Libraries Act, 1892, s. 12 (4); 13 Statutes 855. And see note in Lumley's Public Health, 10th ed., p. 2546.

**Allotments Acts, 1908 to 1931.**—Where a borough, urban district or parish council are of opinion that any land acquired by them for allotments is not needed for that purpose, or that some more suitable land is available, they may, with the sanction of the county council, let the land otherwise than in accordance with the provisions of the Small Holdings and Allotments Act, 1908, as to leasing of allotments (*i*). Any money received from the letting is to be applied in acquiring other land for allotments (*j*) or in the same way as receipts from allotments under the Act are applicable (*k*). The requirements in sect. 8 of the Allotments Act, 1925 (*l*), as to the consent of the M. of A. & F. after consultation with the M. of H., referred to *post*, extend only to land purchased or appropriated (*m*), and does not apply where the land has been acquired by the council on lease. When acting in default of a parish or district council under sect. 24 of the Small Holdings and Allotments Act, 1908 (*n*), the county council would, it is suggested, have also the power of that council of letting land not needed for allotments under sect. 32 of the Act. [31]

**Small Holdings and Allotments Acts, 1908 to 1931.**—The powers of county and county borough councils under sect. 12 (1) (b) of the Land Settlement (Facilities) Act, 1919, referred to *post* (*o*) as to selling land acquired for purposes of small holdings with the consent of the M. of A. & F., where in the opinion of the council it is necessary or expedient so to do for the better carrying into effect of the Small Holdings and Allotments Act, 1908, apply also to the letting of such land, and subject therefore to such consent and in the like circumstances a letting may be effected. The same section also gives power to county and county borough councils generally to manage any land acquired by them under the Small Holdings and Allotments Act, 1908 (*p*). [32]

**Housing Acts, 1925 and 1930.**—The powers of a local authority to let or lease land for purposes incidental to purposes of housing of the working classes, *i.e.* as sites for persons building houses, or on conditions as to maintenance of houses as dwelling-houses for the working classes, are dealt with under the title **HOUSING**. In the case of land acquired as part of or in conjunction with a clearance area which has been cleared of buildings, they may let the land subject to such restrictions and conditions, if any, as they think fit in accordance with sect. 5 of the Housing Act, 1930 (*q*). As to land not cleared, a letting may be made subject to a condition that the buildings thereon are demolished forthwith and to such further restrictions and conditions

(*i*) Small Holdings and Allotments Act, 1908, s. 32 (1); 1 Statutes 262. The sanction of the county council is not required in the case of a county borough; *ibid.*, s. 37.

(*j*) As to land so acquired having to become registered land, see Vol. IV., p. 53, note (*oo*).

(*k*) Small Holdings and Allotments Act, 1908, s. 32 (2).

(*l*) 1 Statutes 320.

(*m*) See *post*, p. 25.

(*n*) 1 Statutes 258, see sub-s. (2). A county council may acquire land for the purpose of leasing it to a parish council for allotments; Land Settlement (Facilities) Act, 1919, s. 17; 1 Statutes 293.

(*o*) 1 Statutes 291. See p. 26. And see also s. 13 of the Land Settlement (Facilities) Act, 1919, as to cases where consent of the Minister of Agriculture and Fisheries is not required.

(*p*) S. 12 (1) (*d*); 1 Statutes 292. As to the implications in such power of management, see note (*d*), *ante*, p. 17.

(*q*) 23 Statutes 400. See also s. 6.

as the local authority think fit (*r*). The letting must be at the best rent that can reasonably be obtained having regard to the conditions and restrictions imposed (*s*). The same provisions as to leasing apply to land purchased for opening out improvement areas (*t*). Capital money received must be applied with the sanction of the M. of H. either in repayment of debt or for any other purpose for which capital money may be properly applied (*u*). [33]

**Town and Country Planning Act, 1932.**—Town planning schemes may, under sect. 11 and the Second Schedule to this Act (*a*), contain provisions as to the disposal of land acquired by the responsible authority or a local authority. Clause 64 of the model clauses of the M. of H. (*b*), allows with the consent of the Minister, a letting for any term of land acquired by a council for the purpose of the scheme, or a letting for a term not exceeding seven years of such land without the Minister's consent. The appropriation of land belonging to the council for the purposes of the scheme (other than land reserved for specific purposes under Part II. of the scheme) is permitted, subject to the Minister's approval, by clause 65 of the model scheme, where the land is not required for any purpose of the scheme, and it is desired to appropriate it to any purpose for which the council may acquire land, and which is not inconsistent with the scheme. The model clauses also provide for the application of capital moneys received (*c*). Reference should, however, be made to the town planning scheme in force in any particular area in question, as departures are made from the model scheme. [34]

#### SALE OR EXCHANGE OF LAND GENERALLY

Sect. 165 of the L.G.A., 1933 (*d*), allows a county council, borough council, or a district council, with the consent of the M. of H. to sell any land they may possess and which is not required for the purpose for which it was acquired or is being used, or with the like consent to exchange (*e*) any land which they may possess for other land either with or without paying or receiving any money for equality of exchange (*f*).

Capital money received as the result of any transaction by way of sale or exchange of land under sect. 165 of the L.G.A., 1933, is to be applied as the Minister may approve towards the discharge of debt or otherwise for any purpose for which capital money may properly be applied (*g*). But if the land is parish property vested in and disposed of by any borough or district council the approval of the Minister must be obtained to its application towards the discharge of some debt of the parish or otherwise for the permanent advantage of the parish (*h*), and is further subject, where the capital money is applied to a purpose other than that for which the land was held, to such adjustment in the council's accounts as the Minister may direct (*g*). [35]

(*r*) Housing Act, 1930, s. 5 (1); 23 Statutes 400.

(*t*) *Ibid.*, s. 8 (2).

(*s*) *Ibid.*, s. 5 (2).

(*a*) 25 Statutes 484, 528.

(*u*) Published 1935 and may be purchased for 2s. of H.M. Stationery Office, Kingsway, W.C.2.

(*c*) Model clause 69; see also note (*b*), *supra*.

(*d*) 26 Statutes 397.

(*e*) Powers of exchanging land as a means of acquiring other land for the purposes of functions under the L.G.A., 1933, or any other public general Act, are contained in ss. 157 (1) and 167 of the L.G.A., 1933; 26 Statutes 391, 398.

(*f*) These powers of sale and exchange are not to affect the provisions of the enactments in the Seventh Schedule to the L.G.A., 1933; see *post*, p. 22.

(*g*) L.G.A., 1933, s. 166; 26 Statutes 397.

(*h*) This provision is intended to cover parish property owned by a borough

Powers identical with those contained in sect. 165 of the L.G.A., 1933, as to the sale and exchange of land are also given to parish councils or, where there is no parish council, to the representative body of a rural parish by sect. 170 of the L.G.A., 1933 (*i*), but in both instances the consent of the parish meeting of the parish must be obtained in addition to the Minister's consent. In the case of the sale or exchange of land held by the parish council or representative body of a rural parish for charitable purposes, a consent or approval to such a transaction under the Charitable Trusts Acts, 1853 to 1925 (*k*), as amended by the Board of Education Act, 1899, *i.e.* the consent of the Charity Commissioners or the Board of Education, is substituted for the approval of the M. of H. and capital money received is to be applied in accordance with a direction given under those Acts (*l*).

Capital money received by a parish council or representative body as the result of a sale or exchange of land, other than land held for charitable purposes, is to be applied in such manner as the M. of H. may approve towards the discharge of some debt of the parish council or meeting or otherwise for any purpose for which capital money may be applied (*m*).

With regard to parish councils, these powers replace sect. 8 (2) of the L.G.A., 1894, as to the disposal of parish land or buildings (*n*). **[36]**

None of the provisions with regard to lands in Part VII. of the L.G.A., 1933, are to authorise a council to dispose of any ancient monument within the meaning of the Ancient Monuments Acts, 1913 and 1931 (*o*), or land in breach of any trust, covenant or agreement binding upon them (*p*), nor are they to affect any provisions as to the disposal of land by a local authority or the application of capital money arising therefrom contained in any of the enactments set out in the Seventh Schedule of the L.G.A., 1933 (*q*), or in any statutory order made thereunder, nor are they to empower a local authority to effect any

or U.D.C. as successors to the overseers and boards of guardians by virtue of the Overseers Order, 1927, and s. 115 of the L.G.A., 1929, as well as exhausted parish lands held by any such council or by a R.D.C. See Interim Report of Local Government and Public Health Consolidation Committee, Cmd. 4272 (1933), paras. 94—101.

(*i*) 26 Statutes 400.

(*k*) 2 Statutes 320 *et seq.*

(*l*) L.G.A., 1933, s. 170 (1) and (2); 26 Statutes 400.

(*m*) *Ibid.*, s. 170 (2); *ibid.*

(*n*) 10 Statutes 781. Parish property transferred to parish councils and representative bodies of rural parishes from boards of guardians by the L.G.A., 1929, and formerly dealt with under s. 115 and Sched. VII. of that Act (10 Statutes 956, 987), is now also to be dealt with under s. 170 of L.G.A., 1933.

(*o*) See note (*o*), *ante*, p. 18.

(*p*) L.G.A., 1933, s. 179 (b) and (d); 26 Statutes 403, 404.

(*q*) *Ibid.*, s. 179 (g). The enactments set out in the Seventh Schedule (26 Statutes 509) are:

The Electricity (Supply) Acts, 1882 to 1933.

The Lunacy and Mental Treatment Acts, 1890 to 1930.

The Technical and Industrial Institutions Act, 1892.

The Military Lands Acts, 1892 to 1903.

The Public Libraries Acts, 1892 to 1919.

The Light Railways Acts, 1896 and 1912.

The Allotments Acts, 1908 to 1931.

The Small Holdings and Allotments Acts, 1908 to 1931.

The Development and Road Improvement Funds Act, 1909.

The Air Navigation Act, 1920.

The Education Acts, 1921 to 1933.

The Housing Acts, 1925 and 1930.

The Town and Country Planning Act, 1932.

Any local Act.

transaction which might be effected under those provisions otherwise than under and in accordance therewith. The result is that, if a sale or exchange of land can be carried out under any of the enactments set out in the Seventh Schedule to the L.G.A., 1933, the council must utilise the particular enactment and not resort to the general powers given by sects. 165 and 170 of the L.G.A., 1933. For example it would appear that, in selling cleared land formerly part of a clearance area, the provisions of sect. 5 of the Housing Act, 1930 (*r*), must be utilised and complied with.

Lands acquired under the powers of the P.H.A., 1875, by borough, urban and rural district councils and no longer required for the purposes for which they were acquired, were formerly to be disposed of by them under sect. 175 of the P.H.A., 1875 (*s*). The material part of that section has been repealed (*t*) by the L.G.A., 1933, and in the new sect. 165 of that Act there is no re-enactment of the mandatory requirement to sell. In the same way, the powers of sale given by sect. 64 (3) of the L.G.A., 1888 (*u*) to county councils, and also to parish councils by the L.G.A., 1894, sect. 8 (2) and the L.G.A., 1929, sect. 115 and Seventh Schedule (*a*) are repealed (*b*) and replaced by the provisions of the L.G.A., 1933, above referred to.

For the provisions applicable prior to June 1, 1934, as to capital money received from the sale of land no longer required by borough, urban and rural district councils, reference should be made to sect. 175 of the P.H.A., 1875 (*c*), and as to the proceeds of sale of land by county councils to sect. 65 (3) of the L.G.A., 1888 (*d*), and of parish property by parish councils to the L.G.A., 1929, sect. 115 and Seventh Schedule (*e*).

[37]

#### SALE OR EXCHANGE OF LAND UNDER PARTICULAR STATUTES

**Electricity (Supply) Acts, 1882 to 1935.**—Local authorities who are electricity undertakers may, under sect. 8 (1) of the Schedule to the Electric Lighting (Clauses) Act, 1899 (*f*), dispose of any land acquired by them under the section for the purposes of their special Order, which land may not for the time being be required for those purposes. The provisions of the Electric Lighting (Clauses) Act, 1899, are (subject to variations) incorporated with every provisional order or special Act or order passed or made after October 1, 1899 (*g*). Money arising from such disposal is to be applied (1) in reduction of capital moneys borrowed for electricity purposes, (2) in reduction of capital moneys borrowed for other than electricity purposes (*h*). [38]

(*r*) 23 Statutes 400.

(*s*) 13 Statutes 699.

(*t*) L.G.A., 1933, s. 307 and Sched. XI., Part I.; 26 Statutes 469, 516.

(*u*) 10 Statutes 738. Para. (a) of s. 9 of the L.G.A., 1929, is also repealed.

(*a*) 10 Statutes 781, 956 and 987. See generally as to the position with regard to parish property prior to the L.G.A., 1933, Interim Report of Local Government and Public Health Consolidation Committee, Cmd. 4272/1933, para. 94.

(*b*) L.G.A., 1933, s. 307 and Sched. XI., Parts III. and IV.

(*c*) 13 Statutes 699. And see Lumley's Public Health, 10th ed., p. 436, note (1).

(*d*) 10 Statutes 739.

(*e*) *Ibid.*, 956, 987.

(*f*) 7 Statutes 710.

(*g*) Electric Lighting (Clauses) Act, 1899, ss. 1 and 2; 7 Statutes 705, 706.

(*h*) *Ibid.*, s. 7 (2) of the Schedule to the Electric Lighting (Clauses) Act, 1899; *ibid.* 710.

**Military Lands Acts, 1892 to 1903.**—Land held on behalf of a volunteer corps for military purposes by the council of a county or borough under the Military Lands Act, 1892 (*i*), may, if the corps is disbanded, be sold under sect. 8 (3) of that Act (*k*) for the best price that can reasonably be obtained. Resultant moneys must be applied in repayment of money borrowed for the purchase of the land or, so far as it is not required for that purpose, to any purpose to which capital moneys are properly applicable and which is approved by the M. of H. Before selling, however, the council must offer the land to the person then entitled to the land (if any) from which the land to be sold was originally severed, and thereupon the provisions of sects. 129 to 132 (both inclusive) of the Lands Clauses Consolidation Act, 1845 (*l*), as to superfluous land are to apply. [39]

**Public Libraries Acts, 1892 to 1919.**—A library authority may, under sect. 12 (3) of the Public Libraries Act, 1892 (*m*), with the sanction of the Board of Education (*n*), sell any land vested in them for the purposes of that Act or exchange it for land better adapted for those purposes. The money arising from the sale or received by way of equality of exchange is to be applied in purchasing other land better adapted for such purposes, or may be applied for any purpose for which capital moneys may be applied and which is approved by the Board of Education (*o*). [40]

**Technical and Industrial Institutions Act, 1892.**—Land acquired for the purpose of an institution for higher education under the Technical and Industrial Institutions Act, 1892 (*p*), may, with the consent of the Board of Education, be sold or exchanged for other land (*q*). Resultant money may, until re-investment in the purchase of land, be invested in any manner in which trust money may lawfully be invested, and all dividends and income on such investments and all resulting income is to be invested in like manner so as to accumulate in the way of compound interest and be added to the capital until the capital is re-invested in the purchase of land (*r*). [41]

**Education Acts, 1921 to 1933.**—Land belonging to a local education authority for the purposes of elementary education and not required by that authority may be sold, leased or exchanged in accordance with the provisions of the Charitable Trusts Acts, 1853–1894, relating to land belonging to a charity, but references to the Board of Education

(*i*) See, however, the Territorial and Reserve Forces Act, 1907, s. 29 (1) and (3) (17 Statutes 292) whereby land held for a volunteer corps may be transferred by Order in Council to a county association.

(*k*) 17 Statutes 579.

(*l*) 2 Statutes 1159, 1160; and see *post*, p. 27.

(*m*) 13 Statutes 854.

(*n*) See S.R. & O., 1920, No. 810, transferring the powers under s. 12 of the Act of 1892 to the Board of Education.

(*o*) Public Libraries Act, 1892, s. 12 (3).

(*p*) 7 Statutes 289. The Act dealt with institutions to give technical instruction, etc., within the meaning of the Technical Instruction Act, 1889, references to which are now, by virtue of s. 171 of the Education Act, 1921 (7 Statutes 215), to be considered as references to Part VI. of the Education Act, 1921, relating to higher education.

(*q*) Technical and Industrial Institutions Act, 1892, s. 9 (1); 7 Statutes 291. See also S.R. & O., Rev. 1904, 4 Education E. p. 6, transferring these powers from the Charity Commissioners to the Board of Education.

(*r*) *Ibid.*, s. 9 (5).

are to be substituted in those Acts for the Charity Commissioners (*s*). A sale or exchange may, therefore, be carried out with the authority of, and after inquiry by, the Board of Education on representation being made to the Board under sect. 24 of the Charitable Trusts Act, 1853 (*t*), that a sale or exchange would be advantageous, and subject to such directions for securing the investment of moneys arising from such sale, or by way of equality of exchange, as the Board may think fit. A council has also power, with the consent of, and after inquiry by, the Board of Education, to alienate any land acquired or held by them under the Education Act, 1921, or any Act repealed thereby, for the purposes of higher education (*u*). The proceeds of any sale are to be applied as the M. of H. may sanction towards the discharge of any loan of the council raised under the Act of 1921, or the repealed Act, or otherwise for any purpose for which capital may be applied by the council under the Act of 1921 (*u*). [42]

**Allotments Acts, 1908 to 1931.**—Where the council of a borough, urban district or parish are of opinion that any land acquired or appropriated by them for the purposes of allotments (*a*) is not needed for that purpose or that some more suitable land is available, they may sell the land or exchange it for other land more suitable for allotments (*b*). Except in the case of a county borough, the sale or exchange is subject to the sanction of the county council (*c*). But, where a local authority has purchased land for use as allotments, it may not sell or dispose of the land, for a purpose other than use for allotments, without the consent of the M. of A. & F. after consultation with the M. of H., and such consent may be given unconditionally or subject to conditions, but may not be given unless the Minister of Agriculture and Fisheries is satisfied that adequate provision will be made for allotment holders displaced or that such provision is unnecessary or not reasonably practicable (*d*). If this consent is obtained, it is not necessary in the case of a non-county borough, urban district or parish council to obtain the sanction of the county council (*ibid.*). County councils acting in default of borough, district and parish councils under sect. 24 of the Small Holdings and Allotments Act, 1908 (*e*), may exercise the powers of those councils, including also, it is suggested, the power of disposal given by sect. 32 of that Act.

The proceeds of a sale of land acquired for allotments, or any money

(*s*) Education Act, 1921, s. 115 (1); 7 Statutes 192.

(*t*) 2 Statutes 328. See also Halsbury's Laws of England, 2nd ed., Vol. IV., pp. 261, 264.

(*u*) Education Act, 1921, s. 115 (2); 7 Statutes 192. As to restrictions on sales of school sites, etc., by trustees or persons holding the legal estate in cases where money has been granted by Parliament for the purchase of the site, see School Grants Act, 1855, s. 1; 7 Statutes 288.

(*a*) Including allotments or field gardens provided under the Inclosure Acts, 1845–1882, or parochial charity lands let as allotments under the Allotments Extension Act, 1882, transferred to local authorities under s. 33 of [the Small Holdings and Allotments Act, 1908, or previous Acts. See ss. 33 (4) and 61 (1) (1 Statutes 263, 278), and also Preliminary Note, 1 Statutes 240 *et seq.*].

(*b*) Small Holdings and Allotments Act, 1908, s. 32 (1); 1 Statutes 262; as amended by s. 8 of the Allotments Act, 1925, and s. 17 of the Agricultural Land (Utilisation) Act, 1931 (1 Statutes 320; 24 Statutes 62).

(*c*) *Ibid.*, ss. 32, 37. As to London, see s. 36 and Land Settlement (Facilities) Act, 1919, s. 24; 1 Statutes 295.

(*d*) Allotments Act, 1925, s. 8 (1 Statutes 320), as amended by s. 17 of the Agricultural Land (Utilisation) Act, 1931 (24 Statutes 62).

(*e*) 1 Statutes 258.

received by way of equality of exchange, must be applied in discharging by way of a sinking fund or otherwise the debts and liabilities of the council in respect of land acquired by the council for allotments or in acquiring, adapting and improving other land for allotments, and any surplus remaining may be applied for any purpose for which capital money may be applied and which is approved by the M. of H., and the interest thereon may be applied in acquiring other land for allotments or in like manner as receipts from allotments are applicable (f).

A borough, urban district or parish council may sell to a county council for the purpose of small holdings any land acquired by them for allotments, but the consent to the sale of the M. of A. and F. after consultation with the M. of H. must be obtained (g). [43]

**Small Holdings and Allotments Acts, 1908 to 1931.**—Land acquired by a county council or county borough council (h) for small holdings, under the Small Holdings and Allotments Act, 1908 (i), may, when in the opinion of the council it is necessary or expedient so to do for the better carrying into effect of that Act, be sold or exchanged subject to the consent of the M. of A. & F. (k). Any capital money received must be applied with the sanction of the M. of H. either in repayment of debt or for any other purpose for which capital money may be applied (l). The requirement as to consent of the Minister first-mentioned to the sale or exchange does not apply where the land has been acquired under such circumstances that the sanction of that Minister was not necessary to the acquisition (m). Where a county council sell a small holding as such, the consideration and conditions are regulated by sects. 5 to 7 of the Small Holdings and Allotments Act, 1926 (n).

A county council may sell to a borough, urban district or parish council for the purpose of allotments any land acquired by the county council for small holdings (o). [44]

**Housing Acts, 1925 and 1930.**—Where a local authority have acquired land for the purposes of Part III. of the Housing Act, 1925, i.e. for the provision of houses for the working classes, they may, with the consent of the M. of H., sell the land or exchange it for land better adapted for those purposes either with or without paying or receiving any money for equality of exchange (p). Such a sale must be for the best price that can reasonably be obtained having regard to any conditions imposed, and any capital money received must be applied in or towards

(f) Small Holdings and Allotments Act, 1908, s. 32 (2); 1 Statutes 262.

(g) *Ibid.*, s. 45 (1 Statutes 270); Allotments Act, 1925, s. 8 (1 Statutes 320); Agricultural Land (Utilisation) Act, 1931, s. 17 (24 Statutes 62).

(h) See definition of "county council" in s. 61 (1) of the Act of 1908; 1 Statutes 278.

(i) See Part I. of the Small Holdings and Allotments Act, 1926, now replacing Part I. of the Act of 1908; 1 Statutes 323.

(k) Land Settlement (Facilities) Act, 1919, s. 12; 1 Statutes 291.

(l) Small Holdings and Allotments Act, 1908, s. 52 (3); 1 Statutes 275.

(m) Small Holdings and Allotments Act, 1926, s. 20, and see s. 4; 1 Statutes 323, 324.

(n) *Ibid.*, 325—327. On the transfer of any land by a county council to a small holder, s. 100 (2) of the Land Registration Act, 1925 (15 Statutes 495), provides that, although a county council may be registered with a possessory title merely, they are able, without anything being done to make their title an absolute one, to transfer such land to a small holder with an absolute title.

(o) Small Holdings and Allotments Act, 1908, s. 45; 1 Statutes 270. As to county borough councils see s. 61 (1) of that Act.

(p) Housing Act, 1925, s. 59 (1) (c); 18 Statutes 1036. As to sale of houses, see also that section and, generally, title **Housing**.

the purchase of other land for the purposes of Part III. of the Act, or, with the consent of the Minister, to any purpose, including the repayment of borrowed money, to which capital money may be properly applied (q). The sale may be in consideration of a chief rent, rentcharge or other similar periodical payment (r).

Land purchased and cleared by a local authority as being comprised in, surrounded by, or adjoining a clearance area, or purchased as cleared land which the owners have failed to re-develop under the procedure laid down by Part I. of the Housing Act, 1930, may be sold at the best price (including a rentcharge) that can reasonably be obtained having regard to any restriction or condition imposed, and any capital money received must be applied with the sanction of the M. of H. either in repayment of debt or for any other purpose for which capital money may properly be applied (s). Where the land is not cleared, any sale must be subject to a condition as to the immediate demolition of buildings, and in any sale such restrictions and conditions may be imposed as the local authority think fit (s). Land purchased for opening out an improvement area may, after the necessary demolitions have been made or provided for, also be sold by local authorities in accordance with the preceding provisions as to land in connection with clearance orders (t). [45]

**Town and Country Planning Act, 1932.**—Town planning schemes may, under this Act, contain provisions as to dealing with or disposal of land acquired by the responsible authority or a local authority (u). All sums received as proceeds of sale of any land purchased under the Act are to be applied as the M. of H. may approve towards the discharge of any debt of the authority or otherwise for any purpose for which capital money may be applied (a). [46]

#### SALE OF SUPERFLUOUS LANDS ACQUIRED UNDER COMPULSORY POWERS INCORPORATING THE LANDS CLAUSES ACTS

Where lands are acquired compulsorily by a local authority, all the provisions of the Lands Clauses Acts apply to the purchase (b) except so far as those provisions are excluded expressly or by implication varied or excepted by the Act authorising the taking of the lands. The provisions of the Lands Clauses Consolidation Act, 1845, as to the sale of superfluous lands are contained in sects. 127 to 132 (c), and relate to land acquired either directly as the result of the exercise of compulsory powers or even by agreement where a power exists to take the lands compulsorily (d). By sect. 127 superfluous land must be sold within the time prescribed by the Act authorising the taking of the

(q) Housing Act, 1925, s. 59 (3); 13 Statutes 1037.

(r) *Ibid.*, s. 59 (4).

(s) Housing Act, 1930, ss. 5 & 6; 23 Statutes 400, 401.

(t) *Ibid.*, s. 8 (2).

(u) Town and Country Planning Act, 1932, s. 11 and Sched. II.; 25 Statutes, 485, 528. For form of usual provision reference may be made to clause 64 of the model clauses issued by the M. of H. and published by H.M. Stationery Office. Clause 69 of the model clauses also provides for the application of capital moneys received.

(a) *Ibid.*, s. 32; 25 Statutes 505. For powers of purchase of land, see ss. 25 and 26; and see, generally, title TOWN AND COUNTRY PLANNING.

(b) Lands Clauses Consolidation Act, 1845, s. 1; 2 Statutes 1113. See title COMPULSORY PURCHASE OF LAND. See also Halsbury (2nd ed.), Vol. VI., p. 32.

(c) 2 Statutes 1158 to 1160.

(d) *Hooper v. Bourne* (1880), 5 App. Cas. 1; 11 Digest 283, 2120.

lands, or, if no such time is prescribed, within ten years after the expiration of the time limited for the completion of the works, and in default of sale the lands vest in the adjoining owners. The remaining sections give, in the case of lands not in a town or not built upon or used for building purposes (e) a right of pre-emption to the person then entitled to the lands (if any) from which the superfluous lands were originally severed, or, if such person cannot be found or refuses to purchase, a right of pre-emption to the person or persons whose lands immediately adjoin the superfluous lands (f); and provide that the right must be claimed by the persons entitled thereto within six weeks after offer is made to sell to them (g). Differences as to price are to be settled by arbitration (h). Conditions as to user may be imposed on a sale of superfluous lands (i).

With regard to the acquisition of land by a local authority these provisions of the Lands Clauses Acts were applied to the purchase of lands by agreement under the P.H.A., 1875, by sect. 176 of that Act (k), except sect. 127 of the Act of 1845, and the view has been expressed (l) that sect. 128 of that Act, giving the right of pre-emption above referred to, was not under these circumstances restricted to cases of compulsory purchase. It is now, however, specifically enacted by sect. 176 of the L.G.A., 1933 (m) (which Act repeals sect. 176 of the P.H.A., 1875), that sects. 127—132 of the Act of 1845 are not to apply to land acquired by agreement under Part VII. of the L.G.A., 1933.

In many cases, also, of compulsory acquisition by a local authority these provisions as to superfluous lands do not apply, or only partially apply. [47]

Provisional orders or compulsory purchase orders made after June 1, 1934, under sect. 160 or 161 of the L.G.A., 1933, for the compulsory acquisition of land will not incorporate the provisions of sects. 127 to 132 of the Act of 1845. They do not apply, therefore, to any order giving compulsory powers to purchase land made under sect. 160 or 161 of the L.G.A., 1933 (n). Nor will they apply apparently to compulsory purchase orders made by county councils under sect. 168 of that Act on behalf of parish councils (o).

But where a compulsory purchase order was made before June 1, 1934, under sect. 176 of the P.H.A., 1875 (p), and sect. 127 of the Act

(e) As to the meaning of lands not within a town or not built upon, see *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 11 Digest 284, 2125; and *Carington (Lord) v. Wycombe Railway Co.* (1868), 3 Ch. App. 377; 11 Digest 287, 2150.

(f) As to the rights of successors in title of the persons from whom superfluous lands were purchased, see *Carington (Lord) v. Wycombe Rail. Co.*, *supra*, and *Highgate Archway Co. v. Jeakes* (1871), L. R. 12 Eq. 9; 11 Digest 287, 2160. And see, generally, cases set out in 11 Digest, Part XIV., commencing at p. 282, and note (l), *infra*.

(g) Act of 1845, s. 129; 2 Statutes 1159.

(h) See *Jones v. South Staffordshire Rail. Co.* (1869), 19 L. T. 603; 11 Digest 288, 2167.

(i) *Re Higgins and Hitchman's Contract* (1882), 21 Ch. D. 95; 11 Digest 287, 2144.

(k) 13 Statutes 700.

(l) See Lumley's Public Health, 10th ed., p. 434, and opinion to the same effect in A.M.C. Monthly Circular (1902), Vol. XXIV., p. 349, dealing also with meaning of words "immediately adjoining."

(m) 26 Statutes 403.

(n) See ss. 160 (6), 161 (2) and Sched. VI.; 26 Statutes 394, 508.

(o) See s. 168 (9); 26 Statutes 398.

(p) 13 Statutes 700.

of 1845 (*q*), was alone excluded by the order, sect. 160 of the L.G.A., 1933 (*r*), would not, it would seem, have the effect of causing to be excluded from the order sects. 128—132 of the Act of 1845 (*s*). It is true that sect. 160 (1) of the Act of 1933 applies the section to powers of compulsory purchase conferred by statutory order already in force and incorporating or applying sect. 176 of the P.H.A., 1875. But on the other hand, sect. 160 (6) of the Act of 1933 does not appear to modify existing orders, because it refers only to provisional orders made under sect. 160, not to such orders made under sect. 176 of the Act of 1875. It may, however, be argued that the provisional order is converted into an order under sect. 160 by sect. 307 (iv.) of the Act of 1933 (*t*), but this would place, it is suggested, an undue strain on this provision, which is in the nature of a saving.

The provisions of Part VII. of the L.G.A., 1933, both as to land compulsorily acquired and land acquired by agreement do not, however, extend (*u*) to the enactments set out in the Seventh Schedule to the L.G.A., 1933 (*a*), and, where these give a power of compulsory purchase, reference must be made to the particular enactments and order made under them (*b*). In some instances, the enactments themselves exclude the provisions of the Lands Clauses Acts as to sale of superfluous lands (*c*). For example as regards land acquired by a council under the Small Holdings and Allotments Act, 1908, it is expressly enacted that they do not apply (*d*), nor do they apply to compulsory purchase orders made under the Housing Acts, 1925 and 1930 (*e*), or under the Town and Country Planning Act, 1932 (*f*), or the Development and Road Improvement Funds Act, 1909 (*g*), or the purchase of land by visiting committees under the Lunacy Act, 1890 (*h*). The application of sect. 127 of the Lands Clauses Consolidation Act, 1845, is also excluded as regards compulsory purchase orders made by a local authority under the Education Act, 1921 (*i*). [48]

#### DISPOSAL OF LAND FOR MILITARY PURPOSES OR AS SITES FOR PLACES OF WORSHIP, SAILORS' HOMES, ETC.

County and borough councils may transfer to the Secretary of State for War on such terms and with or without payment as they may

(*q*) 2 Statutes 1158.

(*r*) 26 Statutes 393.

(*s*) 2 Statutes 1159, 1160.

(*t*) 26 Statutes 469.

(*u*) L.G.A., 1933, s. 179 (*g*) ; 26 Statutes 404.

(*a*) *Ante*, p. 22, note (*q*).

(*b*) As to whether a specific power of disposal supersedes incorporated provisions of the Lands Clauses Consolidation Act, 1845, see the expression of opinion referred to in Lumley's Public Health, 10th Ed., p. 434; also *North British Rail. Co. v. Birrell's Trustees*, [1918] S. C. (H. L.) 33; 11 Digest 287, *m*; and opinion to the effect that ss. 128 and 129 of the Act of 1845 applied to sales of land under s. 175 of the P.H.A., 1875; *Association of Municipal Corpsns. Monthly Circular*, Vol. XLIV., p. 349; and also Vol. L., p. 39.

(*c*) As to orders under the Light Railways Acts, 1896 and 1912, see s. 11 (a) of Light Railways Act, 1896; 14 Statutes 256.

(*d*) Land Settlement (Facilities) Act, 1919, s. 12 (3); 1 Statutes 292. And see also s. 45 of the Small Holdings and Allotments Act, 1908; 1 Statutes 270.

(*e*) Housing Act, 1930, para. 1 of Sched. II.; 23 Statutes 438.

(*f*) See Third Schedule to that Act, Part I., para. 1; 25 Statutes 529.

(*g*) See Schedule to that Act, para. 2 (d); 9 Statutes 217.

(*h*) Lunacy Act, 1890, s. 260; 11 Statutes 105. By s. 265, a local authority is expressly authorised to retain land which is not suitable or not required for mental hospital purposes.

(*i*) See para. (3) of the Fifth Schedule to that Act; 7 Statutes 223. And as to a local education authority which is also a library authority, see also s. 6 of the Public Libraries Act, 1919; 13 Statutes 969.

think expedient, buildings or land held for public uses or purposes (k). Further, the council of a borough or urban district may, with the consent of the M. of H., appropriate land belonging to them for the purposes of a new post office under certain circumstances (l). The Places of Worship Sites Amendment Act, 1882 (m), enacts that any corporation holding land for public purposes may grant land not exceeding in each case one acre as a site for a place of worship or for the minister's residence. But a municipal corporation may not make such a grant without the consent in writing of the Treasury, and parochial property is not to be granted without the consent of the M. of H. The corporation of a municipal borough being a port in the United Kingdom may, with the consent of the M. of H., appropriate any land vested in them as a site for a sailors' home and retain and apply the same accordingly or convey it to trustees (n). Under the Recreation Grounds Act, 1859 (o), a municipal corporation may, with the consent of the Treasury, signified by their executing the conveyance, grant lands to trustees to be held by them as public recreation grounds and playgrounds. The Act also contains provisions as to the granting of parish lands for the same purposes.

Sect. 111 of the Municipal Corporations Act, 1882 (p), allows a municipal corporation, with the approval of the M. of H., to convert any corporate land into sites for working men's dwellings, and for this purpose to make grants or leases for terms of 999 years or less. Power is given to insert in such leases, building, repairing and restrictive covenants. [49]

#### APPROPRIATION OF LAND UNDER VARIOUS ENACTMENTS

The general powers of a local authority to appropriate land belonging to them, and not required for the purposes for which it was acquired, and the limitations on such appropriation under sect. 163 of the L.G.A., 1933 (q), and the specific enactments remaining in force and set out in the Seventh Schedule to that Act (r), are dealt with under the title APPROPRIATION. In addition to the references made in that title to the enactments in the Seventh Schedule of the Act of 1933, it may be mentioned that a power is contained in the Electric Lighting (Clauses) Act, 1899 (the application of which Act is explained, *ante* (s)), whereby local authority undertakers may use, for the purposes of the special order authorising them to supply electricity, any land for the time being vested in them or leased by them, subject to the approval of the M. of H. (t). Further, lands or buildings which are unsuitable or not required for mental hospital purposes may, under sect. 265 of the Lunacy Act, 1890 (u), be retained and appropriated for any purposes

(k) Military Forces Localization Act, 1872, s. 10 (17 Statutes 568); L.G.A., 1888, s. 3; 10 Statutes 688.

(l) Post Office Act, 1908, s. 49; 13 Statutes 57.

(m) 6 Statutes 1241.

(n) Merchant Shipping Act, 1894, s. 259; 18 Statutes 257.

(o) 12 Statutes 369.

(p) 10 Statutes 610. And see s. 65 of the Housing Act, 1925; 13 Statutes 1039.

(q) 26 Statutes 396.

(r) See note (q) on p. 22.

(s) *Ante*, p. 23.

(t) Electric Lighting (Clauses) Act, 1899, s. 8(1) of the Schedule; 7 Statutes 710.

(u) 11 Statutes 106. And see also Mental Treatment Act, 1930, s. 6 (4); 23 Statutes 162.

for which the local authority are empowered to acquire land, subject to the consent of the M. of H. (a). Lands acquired by a county or borough council on behalf of a volunteer corps may, on the disbandment of the corps, be appropriated by the council to any purpose approved by the M. of H., subject to their being previously offered to the person then entitled to the land (if any) from which the same were severed (b). The library authority of any library district which is a borough or urban district may, with the sanction of the Board of Education (c), appropriate for the purposes of the Public Libraries Act, 1892, any land which is vested in them (d). Reference is made, *ante*, p. 30, to powers of disposal, referred to in the particular statutes in question as powers of appropriation, for the purposes of post offices and sailors' homes. [50]

#### LONDON

The provisions of the L.G.A., 1933, above referred to do not apply to London, but the L.C.C. and the metropolitan borough councils have powers under other statutes to sell, lease or otherwise dispose of land, or to utilise land vested in them for purposes other than those for which it was acquired or is held. [51]

**General Power to let or lease Land.**—The L.C.C. and the metropolitan borough councils have power to lease or let any lands vested in them, and not required for the purposes for which they were acquired, under sect. 59 of the L.C.C. (General Powers) Act, 1924 (e). [52]

**Letting or Leasing under Particular Statutes.**—The statutes already referred to as applicable to local authorities in general apply generally to London, subject to the following modifications. The Public Libraries Acts, 1892—1919, may be adopted by any metropolitan borough council under powers conferred by sect. 4 (4) of the London Government Act, 1899 (f). The powers exercisable under the Small Holdings and Allotments Act, 1908, sect. 32, are exercisable by the L.C.C. by virtue of sect. 36 of that Act (g); and by sect. 24 of the Land Settlement (Facilities) Act, 1919 (h) the powers as to allotments conferred on borough councils by the Small Holdings and Allotments Act, 1908, may be exercised by metropolitan borough councils. Special provisions as to the application to London of sect. 5 of the Housing Act, 1930, are contained in sect. 16 of that Act (i), and special provisions as to the application to London of the Town and Country Planning Act, 1932, are contained in sect. 50 of that Act (k). [53]

**General Power of Sale or Exchange, etc., of Land.**—The L.C.C. acquired a power to alienate land, with the consent of the Local Government Board (now the Minister of Health), under sect. 64 (3) of the L.G.A., 1888 (l), and the metropolitan borough councils acquired

(a) Formerly the Secretary of State (S. R. & O., 1920, No. 809).

(b) Military Lands Act, 1892, s. 8; 17 Statutes 579. And see *ante*, p. 24, note (i).

(c) See S.R. & O., 1920, No. 810, transferring the powers under s. 12 of the Act of 1892 to the Board of Education.

(d) Public Libraries Act, 1892, s. 12 (2); 13 Statutes 854.

(e) 11 Statutes 1369.

(f) *Ibid.*, 1227.

(g) 1 Statutes 265.

(h) *Ibid.*, 295.

(i) 23 Statutes 407.

(k) 25 Statutes 516.

(l) 10 Statutes 738.

a similar power by virtue of sect. 6 (5) of the London Government Act, 1899 (*m*). Formerly these authorities or their predecessors had power, under the Metropolis Management Act, 1855, sect. 154 (*n*), to sell or dispose of any land which had been purchased under that Act and was no longer wanted. In that case there was a right on the part of the owner of land sold to the local authority under that Act to reserve a right of pre-emption (sect. 155). This power was repealed so far as metropolitan boroughs were concerned by the London Government Act, 1899. A power to sell land was also given by sect. 96 of the Metropolitan Paving Act, 1817 (*o*), subject to the condition that it must first be offered to the person or persons from whom it had been purchased.

When the county council or any metropolitan borough council sell any land, the proceeds are to be applied in such manner as the Minister of Health sanctions towards the discharge of any loan or otherwise for any purpose for which capital may be applied by the council (*p*).

Metropolitan borough councils must not alienate any recreation grounds or open spaces dedicated to the use of the public or any land held on trusts which prohibit building thereon (London Government Act, 1899, sect. 32 (*q*))). But the county council have power to dispose of land which has been acquired under Part III. of the L.C.C. (General Powers) Act, 1925, for the purpose of a recreation ground, but which is not required (*r*). Both the county council and metropolitan borough councils, however, must have regard to the provisions of the London Squares Preservation Act, 1931 (*s*), which provides for the preservation and restricts the use of squares, gardens and other open spaces in London. [54]

**Sale or Exchange of Land under Particular Statutes.**—The statutes already referred to as applicable to local authorities generally, apply in general to London, subject to the modifications mentioned above under the heading "Letting or Leasing under Particular Statutes," and subject also to the qualification that the Electric Lighting (Clauses) Act, 1899 (*t*), does not apply to London unless incorporated with a Provisional or other Order or with a special Act. [55]

**Powers as to Utilisation of Land.**—The L.C.C. have been authorised, subject to certain conditions, to appropriate and use for any purpose for which they have statutory power to acquire or hold land, any lands vested in them which are no longer required for the purpose for which they were acquired (*u*), and a similar power has been conferred on metropolitan borough councils (*a*). The consent of the M. of H. is usually necessary in both instances. [56]

(*m*) 11 Statutes 1229.

(*n*) *Ibid.*, 923.

(*o*) *Ibid.*, 872.

(*p*) L.G.A., 1888, s. 65 (3); 10 Statutes 739; London Government Act, 1899, s. 6 (5); 11 Statutes 1229.

(*q*) *Ibid.*, 1241.

(*r*) L.C.C. (General Powers) Act, 1925; s. 28; 11 Statutes 1374.

(*s*) 21 & 22 Geo. 5, c. xciii.

(*t*) See s. 2 (2); 7 Statutes 706.

(*u*) L.C.C. (General Powers) Act, 1915, s. 60; 11 Statutes 1332.

(*a*) L.C.C. (General Powers) Act, 1927, s. 57; *ibid.*, 1395.

## DISQUALIFICATION FOR OFFICE

*See ALDERMAN; BOROUGH COUNCILLOR; COUNTY COUNCILLOR;  
DISTRICT COUNCILLOR; PARISH COUNCILLOR.*

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## DISQUALIFICATION OF ELECTORS

*See LOCAL GOVERNMENT ELECTORS.*

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## DISTRESS FOR RATES

*See RATE COLLECTION.*

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## DISTRICT AUDITORS

*See AUDITORS.*

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# DISTRICT COUNCILLOR

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*See also titles :*

ACCEPTANCE OF OFFICE ;  
BOROUGH COUNCILLOR ;  
CORRUPT AND ILLEGAL PRACTICES ;  
CORRUPTION IN OFFICE ;

ELECTION PETITIONS ;  
ELECTIONS ;  
LOCAL GOVERNMENT ELECTORS.

**Preliminary Observations.**—District councillors are either urban district councillors or rural district councillors, and the law relating to them is now, for the most part, contained in the L.G.A., 1933 (*a*), and certain of the statutory rules and orders made thereunder.

Prior to June 1, 1934, when the Act of 1933 came into operation, one turned for information to Part II. and sects. 197 to 203 of the P.H.A., 1875 (*b*), and to Parts II. and IV. of the L.G.A., 1894 (*c*). In addition, various other references to district councillors were scattered about the Statute Book. These scattered references related principally to the qualifications for membership and relief from certain disqualifications, *e.g.* sect. 10 of the Representation of the People Act, 1918 (*d*) ; sect. 125 of the Housing Act, 1925 (*e*) ; sect. 22 (*f*) of the Housing, etc., Act, 1923 (*f*) ; the Audit (Local Authorities) Act, 1927 (*g*) ; and sect. 6 of the Housing (Rural Workers) Act, 1926 (*h*). It may be noted that the provisions of the Sex Disqualification (Removal) Act, 1919 (*i*), were not touched by the Act of 1933.

Though many of the powers exercised by the councils of boroughs, urban and rural districts are not conferred solely by reason of their status as such councils, and therefore one urban district council, for example, may have more extensive functions than another, yet on

(*a*) 26 Statutes 295 *et seq.*  
 (*b*) 13 Statutes 627, 710-712.  
 (*c*) 10 Statutes 792, 804.  
 (*d*) 7 Statutes 555.  
 (*e*) 13 Statutes 1067.  
 (*f*) *Ibid.*, 990.  
 (*g*) 10 Statutes 879.  
 (*h*) 13 Statutes 1169.  
 (*i*) 10 Statutes 79.

the whole urban district councils exercise functions more extensive than rural district councils and less extensive than borough councils. By virtue of orders made by the M. of H. under sect. 25 (5), (6) of the L.G.A., 1894 (*k*), or sect. 276 of the P.H.A., 1875 (*l*), the functions of rural district councils in relation to public health and kindred matters have been enlarged from time to time (generally or specially) and now approximate more nearly to the functions for those purposes of urban district councils (*m*). But on the other hand by sect. 30 of the L.G.A., 1929 (*n*), rural district councils were shorn of important executive powers as highway authorities and in regard to the making up of private streets, and these powers were transferred to the county council. [57]

The law governing both classes of district councillor is now, however, embodied in similar and in many instances identical provisions, to be found in the L.G.A., 1933. One distinction which remains is that while an urban district councillor represents the whole urban district, or, if the district is divided into wards, a ward of the urban district, a rural district as such cannot be divided into wards, although a rural parish may be so divided. A rural district councillor represents a parish of the rural district, or a combination of parishes for the election of rural district councillors, or a ward of a parish formed for the election of such councillors (*o*).

The term district councillor will, therefore, be used in this title as covering a member of either class of authority; where any constitutional or other difference exists, attention will be drawn to the distinction.

It should be remembered in reading Acts of Parliament passed before June 1, 1934, that the definition of "district council" in sect. 21 (3) of the L.G.A., 1894 (*p*), covers the council of a non-county borough (*q*). This plan will be given up in drafting future Acts, and the definition in question has been repealed by s. 307 of the L.G.A., 1933 (*r*), except as respects any enactment passed before June 1, 1934. [58]

**Qualifications.**—Distinctions have been abolished and qualifications for election are now made uniform for county, borough and district councillors; and are concisely set out in sects. 57, 58, of the L.G.A., 1933 (*s*). Sect. 58 merely allows a district councillor to be re-elected upon ceasing to hold the office, unless he is not qualified for election or is disqualified.

The first essential in sect. 57 of the Act is that a candidate should be of full age (*t*) and a British subject (*u*). That requirement being

(*k*) 10 Statutes 795. Replaced by s. 272 of the L.G.A., 1933; 26 Statutes 451.

(*l*) 18 Statutes 741.

(*m*) See particularly the R.D.Cs. (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 580; 24 Statutes 262), being a general order made under L.G.A., 1894, s. 25 (5).

(*n*) 10 Statutes 904.

(*o*) See L.G.A., 1933, s. 38; 26 Statutes 323.

(*p*) 10 Statutes 792.

(*q*) County boroughs were excluded by sect. 35 of the L.G.A., 1894; 10 Statutes 799.

(*r*) 26 Statutes 469, 528.

(*s*) *Ibid.*, 333, 334.

(*t*) A person attains full age in law at the beginning of the day preceding the twenty-first anniversary of his birth. See citations in *Fitzhugh v. Dennington* (1704), 2 Ld. Raym. 1094, per HOLT, C.J., at p. 1096; 28 Digest 140, 9; also *Herbert v. Turball* (1663), 1 Keb. 589; 28 Digest 140, 6; cf. s. 1 of the Old Age Pensions Act, 1911; 20 Statutes 586.

(*u*) See British Nationality and Status of Aliens Act, 1914; 1 Statutes 185.

satisfied, the candidate, provided he is not subject to any positive statutory disqualification, may seek election to the office of district councillor on the footing of one or more of three statutory qualifications :

(1) *As a Local Government Elector for the Area.*—This qualification is evidenced by the register of local government electors, as to which see title REGISTRATION OF ELECTORS. A mere lodger (occupying furnished lodgings) does not as such acquire the local government franchise, and accordingly is not entered in the register of local government electors, though registered as entitled to vote at parliamentary elections. Usually, however, he will possess the alternative qualification of residence referred to in para. (3), post. [59]

(2) *As the Owner of Freehold or Leasehold Land within the Urban or Rural District.*—This qualification is taken from the repealed sect. 10 of the Representation of the People Act, 1918 (a), the reference to copyhold land being of course abandoned in the new Act.

Sect. 57 of the Act of 1933 (b), does not indicate with precision the nature of the interest in land which is sufficient to support the qualification of owning freehold or leasehold land. In sect. 305 of the L.G.A., 1933 (c), "land" is defined as including any interest in land and any easement or right in, to or over land, but this definition does not apply where the context otherwise requires. One cannot conceive that ownership of a mere easement (such as a right of way) gives the requisite qualification. In sect. 57 the expression "land" presumably has a restricted meaning, and may well be limited to corporeal hereditaments (d). [60]

(3) *As having Resided in the District for the whole Twelve Months Preceding the Day of Election.*—Residence here has its ordinary accepted meaning as the place where a person resides or dwells. It is distinguishable from the mere occupation or possession of premises in the district (e). But it must be borne in mind that a person is not necessarily limited to one residence; he may conceivably have a place of dwelling in more than one local government area each of which is sufficient to give him a residence qualification therein (f).

Secondly, the residence must cover the full period of twelve months preceding the day of election. The qualification, however, is not defeated by a mere temporary absence or vacation during that period, provided the candidate has both an intention and a right to continue residence (g).

Residence relates to the urban or rural district, and not to any particular premises situate therein; the qualification is not therefore jeopardised by the fact that the candidate may have moved to and dwelt as a resident in several different premises, all in the district of the same council during the course of the year, so long as the local residence in that district is continuous during the statutory period. [61]

A British subject is one who is naturally born so (within the meaning of that Act) or who has obtained a certificate of naturalisation.

(a) 7 Statutes 555.

(b) 26 Statutes 383.

(c) *Ibid.*, 466.

(d) It is also far from clear what is a sufficient leasehold interest in this connection.

(e) *R. v. Bredwardine*, [1920] 1 K. B. 47; 19 Digest 278, 640.

(f) *Walcot v. Botfield* (1854), 2 Eq. Rep. 758; 11 Digest 311, 23. See also *Stanford v. Williams* (1899), 80 L. T. 490; 19 Digest 265, 481.

(g) *Stanford v. Williams*, *supra*.

The form of nomination paper prescribed by the Election Rules of 1931 (now revoked) included a column for setting forth a description of the candidate's qualification. The purpose of this, beyond reminding a candidate or his proposer and seconder of the need and nature of a qualification, was none too clear.

The form of nomination paper scheduled in the Election Rules made under sect. 40 of the L.G.A., 1933 (*h*), omits any reference to the qualification of the candidate and does not provide for the insertion of a description of its nature.

It should be noted that one or other of the qualifications mentioned *ante* is necessary, not only to entitle a person to be elected a district councillor, but also to *be*, i.e. to remain and continue a councillor. Inasmuch as the residence qualification relates to *a period preceding* the election, this constitutes an established and continuing qualification, and cesser of local residence during the term of office will not cause vacation of office. It is otherwise, however, in respect of either of the other two qualifications (1) and (2), *ante*. If a person has been elected on the strength of his ownership of property in the district (that being his sole qualification), and during his term of office ceases to be an owner, and has not gained an alternative qualification by having become a local government elector, he vacates office as having ceased to be qualified to *be* a councillor. Similarly, if his sole qualification were that of being a local government elector, and he ceases, during his term of office, to be registered as such, without in the mean time having gained an alternative qualification by ownership of land, he must vacate office.

It is apparently immaterial that the nature of the qualification may change; the essential element is the existence of one of the prescribed qualifications throughout the term of office; and, as above stated, the prior residence qualification persists in spite of the actual cessation of local residence.

It is obvious, of course, that a councillor cannot during his term of office gain a residence qualification which will be of any avail in respect of his existing term of office. [62]

**Want of Qualification.**—If a district councillor ceases to be qualified for membership, sect. 64 of the Act (*i*) makes it the duty of the council forthwith to declare his office vacant; the vacancy is signified by notice signed by the clerk of the council and affixed to the council offices. The casual vacancy so arising must be filled within thirty days of the date of the declaration (*k*).

A person, though elected a district councillor, must not act in that office if he is not in fact qualified therefor. If he does so act, the same proceedings may be taken against him under sect. 84 of the Act (*l*), as if he were acting when disqualified; indeed, for the purposes of that section it is enacted that a person shall be deemed disqualified if he is not qualified (*m*). As to these proceedings, see the sub-head "Proceedings in respect of Disqualification," *post*, p. 43. [63]

(*h*) 26 Statutes 325. See the Urban District Councillors and the Rural District Councillors Election Rules, 1934 (S.R. & O., 1934, Nos. 545, 546).

(*i*) 26 Statutes 339. This declaration is unnecessary in a case where a declaration has been made by the High Court under s. 84.

(*k*) S. 67; 26 Statutes 341.

(*l*) *Ibid.*, 350.

(*m*) See s. 84 (7); *ibid.*, 352.

**Election.**—District councillors are elected by the local government electors of the urban or rural district, and where an urban district is divided into wards there is a separate election for each ward (*n*).

The procedure governing their election is, for the most part, set out in the Urban District Councillors Election Rules, 1934 (*o*), and the Rural District Councillors Election Rules, 1934 (*p*), made by the Secretary of State under sect. 40 of the L.G.A., 1933 (*q*). The Second Schedule to the Act of 1933, as adapted and altered by the rules, is set out in the Second Schedule to each code of rules. The procedure is accordingly assimilated, with certain modifications, to that applicable to the election of county and borough councillors; see title ELECTIONS.

By sect. 69 of the Act of 1933 (*r*), any candidate at an election of district councillors is now entitled, after giving reasonable notice, to the free use of a suitable room in the school house of a public elementary school for holding a public meeting in support of his candidature. This right is limited to the period from the day on which notice of the election is given until the day before the day of election, and to any school in a parish wholly or partly comprised in the electoral area in which he is a candidate (*s*). Meetings must be so arranged as not to interfere with education hours, and damage occasioned to the premises, equipment, etc., must be made good by the person by whom, or on whose behalf, the meeting was called (*t*). [64]

**Term and Tenure of Office.**—A district councillor holds office for three years and, if elected at an ordinary election, comes into office on April 15 (*u*). If he be returned at an election to fill a casual vacancy, held otherwise than upon the day of the ordinary election, he comes into office on the publication of the result of the election. In neither case, however, is he entitled to act as a councillor until he has made the required declaration of acceptance of office (*a*); see title ACCEPTANCE OF OFFICE.

When elected to fill a casual vacancy a councillor steps into the shoes of the person in whose place he was elected, and will accordingly retire on the day on which his predecessor normally would have retired (*b*).

There are two systems of retirement from office, under one of which the whole of the urban or rural district councillors retire on April 15 in every third year. Under the other system, in an urban district, one-third of the councillors for the district retire on April 15 of each year, or if the district is divided into wards one-third of the councillors for each ward (*c*). But where one-third of the councillors of a rural district retire in each year, the retirement is almost invariably effected by selecting certain of the parishes or other electoral areas for retirement in a particular year and requiring the whole number of councillors for that electoral area to retire in that year (*d*).

No hour is prescribed at which, on April 15, a district councillor shall retire from or come into office. It would appear that the retire-

(*n*) Ss. 35 (2), 36 (2); 26 Statutes 321, 322.

(*o*) S.R. & O., 1934, No. 545.

(*q*) 26 Statutes 325.

(*p*) *Ibid.*, No. 546.

(*r*) *Ibid.*, 343.

(*s*) In s. 305 of the Act, "electoral area" is defined as meaning the ward, district, parish or other area for which the election is held, thus limiting the right to a school situate in the ward or other area for which the candidate stands.

(*t*) S. 69; 26 Statutes 343.

(*a*) S. 61; *ibid.*, 327.

(*c*) S. 35 (3); *ibid.*, 321.

(*u*) S. 35 (3); *ibid.*, 321.

(*b*) S. 68; *ibid.*, 343.

(*d*) S. 35 (5); *ibid.*, 322.

ment and entry operate simultaneously at the earliest moment of that day. The law disregards fractions of a day. [65]

**Vacation of Office.**—A district councillor ceases or may cease to be a councillor prior to the expiration of the term for which he was elected in the following circumstances: (i.) by failure to make the declaration of acceptance of office within two months of the day of election (e); (ii.) upon his election being declared void as a result of election petition (see title ELECTION PETITION); (iii.) by death; (iv.) by resignation in writing delivered to the clerk of the council (f). It should be addressed to the clerk and left at or sent by post in a prepaid letter to the offices of the council (g); no fine is now payable on resignation (h); (v.) by ceasing to be qualified for membership (i); (vi.) by becoming disqualified for membership (k); (vii.) by absence, i.e. by failure to attend any meeting of the council throughout a period of six consecutive months—unless this failure be due to some reason which the council approves. For this purpose a meeting of the council has a wide signification, because attendance, as a member, at a meeting of any committee or sub-committee of the council, or a meeting of any joint committee or joint board or other body to which any of the functions of the council have been delegated or transferred will count as attendance at a meeting of the council (l).

It will be observed that this seemingly extensive meaning of the expression “meeting of the local authority” nevertheless has its limitations. Attendance at a meeting of, for example, a joint drainage committee or joint hospital board will in most, if not all, cases suffice, because such joint bodies will usually be exercising functions of the district council by transfer or delegation. On the contrary, attendance only at a meeting of a guardians committee of the county public assistance committee (m), or of an area assessment committee (n) would not avoid a failure since those committees are not exercising functions of the district council either by transfer or delegation.

Certain protection is afforded under this head to serving members of H.M. Forces during, and persons in Government employ engaged in connection with, war or any emergency (o). [66]

A question arises whether the period of six months’ absence should be reckoned from the first meeting at which the member failed to attend or from the last meeting at which he attended. The former view was held to be right in *Kershaw v. Shoreditch Corporation* (p), but the language of sect. 63 of the Act of 1933 differs from that of sect. 46 (6) of the L.G.A., 1894 (q), on which *Kershaw’s* case was decided, and supports the conclusion that failure to attend any meeting throughout any period of six months disqualifies. On the other hand, can a member

(e) L.G.A., 1933, s. 61; 26 Statutes 337; see title ACCEPTANCE OF OFFICE.

(f) S. 62; 26 Statutes 338.

(g) S. 286; *ibid.*, 457.

(h) The provisions as to fine on resignation contained in s. 36 of the Municipal Corporations Act, 1882 (10 Statutes 589), applied by the L.G.A., 1894, to district councils, were repealed by L.G.A., 1933, Sched. XI.; 26 Statutes 517.

(i) See *ante*, p. 37.

(k) See “Disqualification from Membership,” *post*, p. 40.

(l) S. 63; 26 Statutes 338.

(m) Poor Law Act, 1930, s. 5; 12 Statutes 971.

(n) R. & V.A., 1925, s. 17; 14 Statutes 641.

(o) L.G.A., 1933, s. 63 (1), proviso (b); 26 Statutes 339.

(p) (1906), 70 J. P. 190; 33 Digest 11, 23.

(q) 10 Statutes 805.

be said to have failed to attend a meeting of the council until some meeting was convened at which he might have attended?

A councillor who has a good reason for absence (as from illness or otherwise) should, if desiring to retain his membership, explain the circumstances to his council and seek their approval of the reason for absence (*r*). But it would seem that the seat of a member does not become vacant by absence from meetings until the council have declared the office vacant under sect. 64 of the Act (*s*), and if so, the council may effectively approve the reason for absence, after the period of six months' absence has expired, and thus prevent the vacation of the seat by the member.

A resumption of attendance after failure during the statutory period does not cure the default (*t*).

Vacation of office is not automatic under (v.) or (vii.), *ante*; nor under (vi.), unless the disqualification attaches by reason of surcharge, conviction, or corrupt or illegal practices.

In those instances of disqualification or of loss of qualification where vacation does not follow automatically, a duty lies upon the council to declare the office vacant (*u*). Alternatively, a declaration of like effect may be made by the High Court as a result of proceedings under sect. 84 of L.G.A., 1933 (*a*).

In any case where the office of councillor is vacated, either automatically or as a result of declaration, a casual vacancy arises to be filled; see title CASUAL VACANCY. [67]

**Disqualification for Membership.**—The L.G.A., 1933, draws distinctions between (a) lack or cesser of qualification; (b) cesser of membership through failure to attend meetings during a period of six consecutive months; and (c) positive disqualifications for membership. All three have incidents in common and may result in a vacation of office and the creation of a casual vacancy.

The disqualifications for being elected or being a district councillor are numerous and of varied character, and are gathered up in s. 59 of the L.G.A., 1933 (*b*). They are generally similar to, but not identical with, those operating under the earlier law (*c*). But there is one important exception; the previous statutory provisions imposing disqualification by reason of interest in a bargain or contract with the council have been repealed without re-enactment. Certain disabilities and obligations are now imposed on a councillor instead of actual disqualification for membership (*d*). [68]

(*r*) In *R. v. Hunton; ex parte Hodgson* (1911), 75 J. P. 335; 33 Digest 12, 25, it was held to be unnecessary for a member absent through illness to notify the council of his illness. That decision, however, was based on the language of L.G.A., 1894, s. 46, which expressed an exception "in case of illness or for some reason approved," etc.; s. 63 of the L.G.A., 1933, does not allow of automatic exemption in case of illness. All claimed reasons for non-attendance require the council's approval in order to render them effective.

(*s*) 26 Statutes 339.

(*t*) See *R. v. Hunton, ex parte Hodgson, supra*.

(*u*) L.G.A., 1933, s. 64; 26 Statutes 339.

(*a*) See under heading "Proceedings in Respect of Disqualification, etc.," *post*, p. 43.

(*b*) 26 Statutes 334.

(*c*) E.g. under L.G.A., 1894, s. 46 (10 Statutes 804); and the Audit (Local Authorities) Act, 1927; 10 Statutes 879.

(*d*) See under sub-heading "Disabilities," *post*, p. 44.

The various disqualifications for being elected or being a district councillor are as follows (e) :

(1) *The Holding of any Paid Office or other Place of Profit under the Council or any of their Committees.*—A refinement of this disqualification has to be noted. If a person is a paid officer of a local authority and is employed under the direction of a committee or sub-committee, any member of which is appointed on the nomination of some other local authority—then that officer is disqualified from membership of the latter authority (f). For example, a public assistance officer of a county council, employed and acting under the direction of a guardians committee on which a district council's nominee serves, cannot be a member of that district council. But this provision does not extend to an officer of a joint board.

As falling within the category of a paid officer, a teacher in a non-provided school which is maintained by a council is in the same position as one in a school provided by the council (g).

Apparently "committee" in sect. 59 of the Act includes a joint committee, looking to the reference in subsect. (2) to members appointed on the nomination of another local authority. Accordingly, it would seem that the principle of the decision in *Greville-Smith v. Tomlin* (h) is preserved, and that a paid officer of a joint committee cannot become a member of a district council who participate in the appointment of the joint committee.

It is immaterial that the occupant of a paid office forgoes the actual profits of the office, and allows them to be taken by another. The holding of such an office is the criterion (i), and the fact that the salary or wages may be recoverable by the council from the county council, does not lift the disqualification (j). [69]

(2) *Having been Adjudged Bankrupt or made a Composition or Arrangement with Creditors* (k). An arrangement made by a partnership firm disqualifies the individual members thereof (l).

The bankruptcy disqualification terminates on annulment owing to the debts having been fully paid (m) or the adjudication having been unjustified; or on discharge of the bankrupt with a certificate to the effect that the failure was due to misfortune without misconduct on his part. Otherwise the disqualification does not cease until the expiration of five years after the date of discharge.

Where there is no adjudication but a composition or arrangement with creditors is made, the disqualification ends on the completion of payment of the debts in full (n); otherwise it ceases on the expiration of five years from the date of fulfilment of the terms of the deed of composition or arrangement. [70]

(e) L.G.A., 1933, s. 59 (1); 26 Statutes 334.

(f) *Ibid.*, sub-s. (2).

(g) *Ibid.*, sub-s. (5). And see, as to appointment of teachers in non-provided schools, Education Act, 1921, s. 29; 7 Statutes 143.

(h) [1911] 2 K. B. 9; 33 Digest 10, 14.

(i) *Delane v. Hillooat* (1829), 9 B. & C. 310.

(j) *R. v. Davies, ex parte Penn* (1932), 96 J. P. 416; Digest (Supp.).

(k) As to the nature of compositions and arrangements, and the circumstances of this disqualification arising, see 2 Halsbury (2nd Ed.), title "Bankruptcy," pp. 4 *et seq.* and statutes there cited. See also in this connection *R. v. Cooban* (1886), 18 Q. B. D. 269; 33 Digest 10, 10; *Corrigan v. Allison* (1900), 64 J. P. 678; 33 Digest 9, e; *Bradfield v. Cheltenham Guardians*, [1906] 2 Ch. 371; 4 Digest 177, 1645.

(l) *Ward v. Radford* (1895), 59 J. P. 632; 33 Digest 10, 11.

(m) On the subject of annulment on payment in full, and the effect of misconduct thereon, see *Re Keet, ex parte Official Receiver*, [1905] 2 K. B. 666; 4 Digest 189, 1749.

(n) See *Re Keet, ex parte Official Receiver, supra*.

(3) *Receipt of Poor Relief since Election, or within Twelve Months before the day of Election.* Relief given in the form of relief on loan disqualifies under this head (o). But poor relief does not, for this purpose, include in respect of a person, or member of his family, medical or surgical treatment or admission to an institution for such treatment, or relief which might have been granted under the Blind Persons Act, 1920 (p). The maintenance of a person or member of his family in a rate-aided institution under the Lunacy and Mental Treatment Acts does not disqualify (q). [71]

(4) *Being or having been surcharged by a district auditor to an amount exceeding £500 since election or within five years before the day of election.* In this respect sect. 59 of the L.G.A., 1933, re-enacts the provisions of The Audit (Local Authorities) Act, 1927 (r); see title SURCHARGE.

A surcharge may be the subject of an application or an appeal. The five-year period runs from expiry of the time allowed for an application or appeal; or, if such be made, from the date of its final disposal or abandonment, or failure from its non-prosecution (s). [72]

(5) *Conviction of an offence since election, or within five years before the day of election, and sentence to imprisonment for not less than three months without the option of a fine.* This is limited to convictions in the United Kingdom (t), the Channel Islands or the Isle of Man.

Inasmuch as an appeal may be made against a conviction, similar provision is made in regard to the date on which the conviction is deemed to have occurred and from which the five years accordingly will run as is made in regard to the date and period of a disqualification for a surcharge (u).

The criterion here is not the maximum penalty which the offence could attract, nor necessarily the penalty in fact undergone. Disqualification depends on the sentence actually passed by the court.

Sect. 46 (1) of the L.G.A., 1894 (a), imposing a disqualification by reason of a conviction excluded any offender who had received a free pardon. This exception has not been re-enacted, doubtless because a free pardon of itself expunges the offence and no conviction remains on record (b). [73]

(6) *Disqualification under any enactment relating to corrupt and illegal practices (c).* [74]

**Disqualification for service on Committees.**—The various disqualifications discussed in the preceding paragraphs are not limited in

(o) *Chard v. Bush*, [1923] 2 K. B. 849; 33 Digest 9, 9. As to the meaning of the expression "poor relief," see also *R. v. Ireland* (1868), L. R. 3 Q. B. 130; 33 Digest 9, 8; s. 18 of the Poor Law Act, 1930; 12 Statutes 979; *R. v. Leycester, ex parte Greenbaum* (1915), 79 J. P. 14; 2 Digest 196, 549; and *Magarrill v. Whitehaven Overseers* (1885), 16 Q. B. D. 242.

(p) 20 Statutes 598.

(q) Mental Treatment Act, 1930, s. 18; 23 Statutes 170.

(r) 10 Statutes 879.

(s) L.G.A., 1933, s. 59 (1), Proviso (v.); 26 Statutes 335.

(t) Under the Royal and Parliamentary Titles Act, 1927 (3 Statutes 191), "United Kingdom" means Great Britain and Northern Ireland. Conviction in the Irish Free State will not disqualify.

(u) See under para. (4), *supra*.

(a) 10 Statutes 804.

(b) See *Hay v. Tower Division of London Justices* (1890), 24 Q. B. D. 561; 30 Digest 25, 163.

(c) See title CORRUPT AND ILLEGAL PRACTICES.

application to membership of the district council itself. They apply also and equally in regard to membership of any committee or sub-committee of the council and joint committees. That is to say, a person disqualified as a member of the council is disqualified also as a member of any of their committees or sub-committees, or for being a representative of the council upon a joint committee appointed by agreement between that council and other local authorities under any enactment (d). On the other hand, this provision does not cause a disqualified councillor to be disqualified for representing the council on a joint board constituted by order. In such an instance, a disqualification might arise under the order, on the councillor becoming disqualified as a councillor.

There are exceptions affecting the teaching service. Teachers or persons holding office in a school or college aided, provided, or maintained by a council are not debarred from service on their education committee, library committee, or committee for mental defectives (e). [75]

**Proceedings in respect of Disqualification, etc.**—If a member of a district council becomes disqualified for membership owing to his holding a paid office, or being adjudged bankrupt, or making a composition or arrangement with his creditors, or receiving poor relief (but not in cases of disqualification by reason of surcharge, conviction, or corrupt or illegal practices) it is the duty of the council forthwith to declare the member's office vacant (f).

If the council fail to do so a remedy is available to any local government elector of the district through the High Court or a court of summary jurisdiction (g).

The proceedings may be taken against a person acting as a councillor when disqualified, and must be instituted within six months of his so acting. It is a question whether proceedings under sect. 84 are available in respect of a disqualification which existed at the date of election or whether an election petition is the only remedy. This point is discussed in the title **BOROUGH COUNCILLOR** on pp. 169, 170 of Vol. II.

If the allegation be proved, the court (in High Court proceedings under sect. 84) may make a declaration accordingly, and also declare a vacancy in the office; in addition, the court may by injunction restrain the defendant from further acting and also order him to forfeit (h) to His Majesty a maximum sum of £50 for each occasion on which he acted when disqualified.

A court of summary jurisdiction also may, on a case proved in summary proceedings, impose a maximum fine of £50 for each occasion; but has not the power of declaration or injunction possessed by the High Court. Proceedings in a court of summary jurisdiction may be discontinued and carried to the High Court if the justices are of opinion that more properly they should be so dealt with; or if the High Court, on the defendant's application, so orders. [76]

Proceedings of like character, on grounds of disqualification, may be instituted in the High Court (exclusively) in cases where a person *claims* to be entitled to act as a councillor although he may not have so acted.

(d) L.G.A., 1933, s. 94; 26 Statutes 356.

(e) *Ibid.*, proviso.

(f) S. 64; 26 Statutes 339.

(g) S. 84; *ibid.*, 350.

(h) The word "fine" is not used in the Statute as the High Court in such cases is exercising a civil jurisdiction.

A six months' limitation of time for institution of proceedings is not imposed in this connection. On the case being proved, the court may make a declaration that the defendant is claiming to act as a councillor when disqualified, may declare the office vacant and may grant an injunction restraining him from acting (*i*).

The institution of any proceedings as above-mentioned is open only to a local government elector of the district (*k*). The fiat of the Attorney-General is not required. For purposes of proceedings of this character, the meaning of disqualification is extended (*l*) to include *want of qualification* (*m*) and also cesser of membership through failure to accept office within the prescribed time (*n*), resignation (*o*), or failure to attend meetings of the council (*p*). [77]

**Disabilities : Interest in Contracts, etc.**—A district councillor may not speak or vote on any contract or proposed contract or other matter coming before a meeting of the council at which he is present if he has any direct or indirect pecuniary interest in the matter. Furthermore, he must, as early as practicable after the commencement of the meeting, disclose his interest (*q*). The same disability and obligation apply to members of committees and sub-committees and joint committees in respect of business coming before meetings of such bodies (*r*).

A councillor who, or whose nominee, is a member of the company or other body, with which the contract is made or proposed, is deemed to have an indirect pecuniary interest ; so also is a councillor who is a partner of a person, or in the employment of a person, having a direct interest as contractor or otherwise (*s*). Where a husband and wife cohabit and the interest of one is known to the other, being a councillor, the disability and obligation attach to the latter.

There are necessary exemptions in regard to the interest which a councillor has, or will usually have (*i*) in a contract or matter as an ordinary ratepayer or inhabitant of the district, or as a consumer of gas, electricity or water, and (*ii*) in a matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public (*t*).

(*i*) S. 84 (4) ; 26 Statutes 351.

(*k*) L.G.A., 1933, s. 84 (5) ; *ibid.*

(*l*) *Ibid.*, sub-s. (7).

(*m*) See sub-headings "Qualifications" and "Want of Qualification," *ante*, pp. 35-37.

(*n*) See sub-heading "Vacation of Office," *ante*, p. 39.

(*o*) See *ante*, p. 39.

(*p*) See *ante*, p. 39.

(*q*) L.G.A., 1933, s. 76 (1) ; 26 Statutes 346.

(*r*) S. 95 ; *ibid.*, 357.

(*s*) Subject, however, to two qualifications : first, there is an exception in respect of membership of a public body, or employment thereunder ; second, a member of a company, etc., is not to be regarded as having an indirect pecuniary interest merely from such membership if he has no beneficial interest in any shares or stock of the company. Proviso to s. 76 (2) ; 26 Statutes 347.

(*t*) S. 76 (1) proviso ; 26 Statutes 346. The significance and implications of these exceptions remain to be tested ; instances may occur when difficulty will be experienced in interpretation. Clearly, a distinction must be drawn between the councillor's general interest, as a ratepayer or resident, and any interest he may have which is particular and peculiar to himself. The general fixing of tramway fares, of charges for use of public baths or tennis courts, and of prices for the sale of coke, for example, undoubtedly fall within the exceptions. Probably, also, the general fixation or variation of housing and allotment rents—though one cannot too readily assume that houses municipally provided for the working classes are a service offered to "the public." On the other hand, a point at issue between a

The disclosures may be made verbally and must be recorded in a register kept for the purpose (*u*) by the clerk of the council (*a*). This register is open to inspection by any member of the council. A member may (to save the necessity of frequent disclosure and avoid the possibility of an oversight) make a general disclosure by way of notice in writing to the clerk of his (or his spouse's) membership of or employment by any specified company or other body, or partnership with or employment by any specified person. This amounts to a sufficient disclosure in respect of dealings with that company, body or person (*b*). Such general notices have also to be recorded by the clerk in the register, and they may, of course, be withdrawn by the member if and when circumstances alter. [78]

By standing order the council may provide for the exclusion from a meeting of an interested councillor when the matter in question comes forward for consideration (*c*). Such an order may provide for his retirement automatically unless invited to remain ; or, alternatively, to retire if called upon to do so. Standing order 20 in the model series issued by the M. of H. in December 1934 for the guidance of local authorities is based on the former alternative with certain qualifications (*d*).

It is recognised in sect. 76 (8) of the Act (*e*) that these disabilities may prevent the formation of a quorum, or otherwise impede the due transaction of business. The M. of H. has power in such cases, with or without conditions, to remove the disabilities if satisfied that the interests of the inhabitants of the district so require.

A failure to disclose an interest, or speaking or voting when prohibited by sect. 76 (1) of the Act, is an offence punishable summarily for which a fine not exceeding £50 may be imposed, unless the councillor can prove ignorance of the fact that the contract or matter occasioning the disability was the subject of consideration at the meeting (*f*). Proceedings under sect. 76 can be taken only by or on behalf of the Director of Public Prosecutions (*g*). [79]

**Effect of Bias.**—Apart from the penal obligations and restrictions imposed on councillors, which are discussed in the preceding paragraphs, a member who has a personal interest in a matter coming before his council or any of their committees should, on principle, avoid joining in its discussion, and preferably should absent himself from the meeting until the matter has been disposed of. For if a biased member participates, and in regard to the business in question the council is exercising judicial or quasi-judicial rather than purely administrative functions,

"member-consumer" and the council, on a question of right or liability which is individual and particular, and in which a pecuniary interest is involved, would presumably be a matter falling outside the exceptions.

(*u*) S. 76 (5) ; 26 Statutes 347.

(*a*) Or of the committee or joint committee, as the case may be.

(*b*) Sub-s. (4).

(*c*) Sub-s. (9).

(*d*) Standing order 20 also dispenses with automatic retirement where the matter is before the council as part of the report of a committee and is not itself the subject of debate. This is a convenient suggestion, for otherwise members may very frequently, and to the disturbance of business, have to vacate the council chamber (and be subsequently recalled) when committee reports which include recommendations regarding routine contracts and accounts come forward for approval—in most instances without any likelihood of discussion.

(*e*) 26 Statutes 347.

(*f*) Sub-s. (6) ; *ibid.*

(*g*) Sub-s. (7).

the proceedings and resolutions of the council may be jeopardised. Such functions may frequently be exercisable under town planning schemes, and in regard to licensing and other matters, in which parties may be heard and decisions have to be made affecting personal rights and property (*h*). A member may be deemed to have voted when a resolution appears to have been passed unanimously, or where there is no record of the voting, and a want of sufficient evidence that the member did not in fact vote (*i*). **[80]**

**Removal from Office.**—There is some doubt as to whether a councillor could be removed from his office by the council under the common law power of amotion; that is under the inherent right of a corporation (and a district council is a corporate body) (*k*), as a deliberative body to protect itself by depriving of his office a manifestly refractory and unsuitable member (*l*). No doubt a district council may enforce the removal and temporary exclusion from a particular meeting of an unruly member who, by his conduct, obstructs the transaction of business. Preferably any such drastic action should be founded upon standing order (*m*). **[81]**

**Rights, Duties and Privileges.**—Broadly speaking a district councillor does not, as an individual, enjoy rights and privileges beyond those of an ordinary ratepayer. He is not an administrator clothed by law with executive authority, but a member of a corporate body which decides by resolution, acts by its officials, and in its more important and substantial transactions binds itself by its common seal.

*Prima facie* a councillor has of himself no special right of entry on council property, or of access to documents, or of issuing instructions or of directing staff. He may occasionally by standing order be accorded privileges in regard to such matters. It should be noted, however, that he has a statutory right of inspecting the accounts of his council and of their treasurer, and of making a copy of or extract from these accounts (*n*).

Although a councillor does not normally exercise any executive functions as an individual he may be given special powers in various respects by resolution of the council—equivalent in certain instances to delegation—provided the council are not thereby acting *ultra vires*.

As a specific instance of authorisation which can be given pursuant to statute, a councillor may be authorised by resolution, either generally

(*h*) On the subject of exercise by administrative bodies of judicial functions, and the effect of bias, see *R. v. Electricity Commissioners*, [1924] 1 K. B. 171; Digest (Supp.); *R. v. L.C.C.*, [1892] 1 Q. B. 190; 33 Digest 103, 698; *R. v. Surrey Assessment Committee, ex parte Woolworth*, [1933] 1 K. B. 776; Digest (Supp.); *R. v. Hendon R.D.C., ex parte Chorley*, [1933] 2 K. B. 696; Digest (Supp.); *R. v. Cardiff Corpn.; ex parte Westlan Productions, Ltd., New Theatre (Cardiff), Ltd., and Moss Empires, Ltd.* (1929), 73 Sol. Jo. 766; Digest (Supp.); *Murray v. Epsom Local Board* (1897), 61 J. P. 71; 33 Digest 17, 65; and *R. v. L.C.C., ex parte Entertainments Protection Association, Ltd.* (1931), 95 J. P. 89; Digest (Supp.).

(*i*) See *Everett v. Griffiths*, [1924] 1 K. B. 941; 33 Digest 12, 28; and *R. v. Hendon R.D.C. ex parte Chorley, supra*.

(*k*) L.G.A., 1933, ss. 31 (2), 32 (2); 26 Statutes 320.

(*l*) See the discussion as to the power of a borough council on pp. 174, 175 of Vol. II.

(*m*) See *Doyle v. Falconer* (1866), L. R. 1 C. P. 328; 17 Digest 426, 73; also *Vaughan v. Hampson* (1875), 33 L. T. 15; 43 Digest 488, 661. As to the authority of a district council to make standing orders generally, see L.G.A., 1933, Sched. III, Part V., para. 4; 26 Statutes 501. And see title MEETINGS.

(*n*) L.G.A., 1933, s. 283 (3); 26 Statutes 455.

or specially, to institute, defend or appear in summary proceedings on the council's behalf (o). [82]

Proceedings against a public authority for any act done in execution of a statutory or public duty, or authority, or for alleged neglect or default therein, must be brought within six months of the cause of action (p). This protection does not extend to actions arising out of contract. It may be surmised that a member of a district council, acting in performance of a public duty cast upon him by delegation *intra vires*, would be within the statute.

There is no authority for claiming that a councillor is entitled as of right to attend and participate in meetings of committees of his council of which he has not been appointed a member. In this connection, also, a councillor may be given a (perhaps qualified) privilege by standing order.

A member elected to the chair of his council has certain powers and prerogatives beyond those of the ordinary members (q).

Freedom of speech is to some extent allowed to a district councillor on proper occasions and in relation to matters under consideration by the local authority. When speaking at a meeting of the council upon business then before the meeting he is speaking in circumstances of privilege. This privilege, however, is qualified, not absolute; it is destroyed by proof of malice. A councillor, therefore, who wantonly abuses his position in making defamatory statements may render himself liable to damages and injunction on an action for slander (r).

Restrictions are placed by statute upon the utilisation of trade union funds in support of candidature for membership of a district council or for maintenance of an elected councillor (s). [83]

(o) S. 277; 26 Statutes 452.

(p) Public Authorities Protection Act, 1893; 13 Statutes 455. See title PUBLIC AUTHORITIES PROTECTION ACT.

(q) See titles CHAIRMAN OF URBAN DISTRICT COUNCIL and CHAIRMAN OF RURAL DISTRICT COUNCIL.

(r) *Mapey v. Baker* (1909), 73 J. P. 289; 32 Digest 124, 1559; and *Royal Aquarium and Summer and Winter Garden Society, Ltd. v. Parkinson*, [1892] 1 Q. B. 431; 33 Digest 104, 699. And see title DEFAMATION.

(s) Trade Union Act, 1913; 19 Statutes 704.

## DISTRICT COUNCILS

*See RURAL DISTRICT COUNCIL; URBAN DISTRICT COUNCIL.*

## DISTRICT NURSES

*See VOLUNTARY HOSPITALS AND INSTITUTIONS.*

## DISTRICT SURVEYOR

*See BOROUGH ENGINEER AND SURVEYOR; COUNTY ENGINEER;  
SURVEYOR OF DISTRICT COUNCIL.*

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## DISTRICT VALUER

*See VALUER.*

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## DISUSED BURIAL GROUNDS

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*See also titles :*

BURIALS AND BURIAL GROUNDS ;  
CEMETERIES ;  
CONSECRATION ;

OPEN SPACES (as to the Conveyance  
of Disused Burial Grounds as Open  
Spaces).

**Discontinuance of Burials by Order.**—An Order in Council may be made for the discontinuance of burials in any burial ground or place of burial, within or outside London, and such a prohibition may be complete or subject to exceptions or qualifications (*a*). The powers and duties of a Secretary of State in regard to this matter are now exercised by the M. of H. (*b*). Such orders, however, unless expressly mentioned, do not extend to the burying places of Quakers and Jews (*c*). The Minister, when making a representation to the Privy Council for the issue of such an order, will base it on the need of protecting the public health, and notice of the representation must be affixed to the doors of churches and chapels in the parish in which the particular burial ground is situated and also published in the *London Gazette* (*a*). Ten days' notice must be given to the incumbent and vestry clerk of a metropolitan parish, and if the parish is outside London, to the churchwardens as well, of the intention of the Minister to make the representation (*ibid.*).

On the closing of a burial ground by Order in Council, it becomes unlawful to inter bodies therein save to such extent as may be allowed by the order. Any one offending is guilty of a misdemeanor (*d*), or

(*a*) Burial Act, 1852, s. 2 ; Burial Act, 1853, s. 1 ; 2 Statutes 190, 210.

(*b*) Burial Act, 1900, s. 4 ; 2 Statutes 251 ; M. of H. Act, 1919 ; 3 Statutes 417.

(*c*) Burial Act, 1852, s. 3 ; Burial Act, 1853, s. 2 ; 2 Statutes 191, 211.

(*d*) *Ibid.*, s. 4 ; *ibid.*, s. 3 ; *ibid.*, 191, 212.

a penalty not exceeding £10 may be recovered on summary conviction (e). An urn containing the ashes of a cremated body may be deposited in a church in which burials have been discontinued by Order in Council (f). [84]

Consequent upon the closure by Order in Council of a burial ground of a parish in London, a parishioner or inhabitant of the same parish may not be buried in a burial ground in London belonging to any other parish in London, unless one of his relatives or members of his family have been interred there, and the person responsible for the funeral so desires. Anyone knowingly authorising or permitting a burial contrary to the above prohibition is guilty of a misdemeanor (g).

Where a faculty granting a right of interment has been issued or an exclusive right of burial has been purchased or acquired (e.g. by transfer previous to the passing of the Burial Act of 1852 or 1853, as the case may be), including the right of burial in a vault, the M. of H. may grant a licence for the exercise of such rights, provided he is satisfied that further interments will not be detrimental to health (h).

Since an Order in Council for discontinuance may be postponed or varied by a further order (i), it follows that any trusts upon which any land is held for a burial ground, are not extinguished, but merely suspended by the order.

Land granted for burials and consecrated for that purpose (k), does not, unless authorised by a special Act of Parliament, revert to the grantor upon the discontinuance of burials therein (l). [85]

**Keeping in Order of Closed Burial Grounds.**—Where an Order in Council is issued for the discontinuance of burials in a churchyard or burial ground, the churchwardens or burial board (as the case may be) were required by sect. 18 of the Burial Act, 1855 (m), to maintain it in decent order and to do necessary repairs to the walls and fences. The costs and expenses were to be repaid by the overseers, out of the poor rate of the parish or place in which the churchyard or burial ground was situate on the certificate of the churchwardens or burial board unless some other fund was legally chargeable with the expenses.

It has been held that if the closed burial ground were a churchyard, the churchwardens were the persons who were required by sect. 18 to repair, and that if the closed burial ground was provided by a burial board, it rests with the burial board to keep the ground in order (n).

It was also decided that sect. 18 of the Act of 1855 extended only to parochial burial grounds closed by Order in Council, not to private burial grounds (o).

By sect. 6 (1) (b) of the L.G.A., 1894 (p), the obligations of the churchwardens under sect. 18 of the Act of 1855 with respect to closed churchyards were transferred in any parish with a parish council to the parish council, but the obligations were not to attach to the parish council

(e) Burial Act, 1855, s. 2; 2 Statutes 218.

(f) *Re Kerr*, [1894] P. 284; 7 Digest 563, 384.

(g) Burial Act, 1852, s. 5; 2 Statutes 191.

(h) *Ibid.*, s. 6; Burial Act, 1853, s. 4; *ibid.*, 191, 212.

(i) Burial Act, 1855, s. 1; *ibid.*, 218.

(k) For consecration, see titles CONSECRATION and BURIAL GROUNDS.

(l) *Campbell v. Liverpool Corp.* (1870), L. R. 9 Eq. 579; 7 Digest 550, 285.

(m) 2 Statutes 224.

(n) *R. v. Bishop Wearmouth Burial Board* (1879), 5 Q. B. D. 67; 7 Digest 551, 239.

(o) *R. v. St. John, Westgate and Elswick Burial Board* (1862), 2 B. & S. 703; 7 Digest 551, 288.

(p) 10 Statutes 778.

until the churchwardens had given a certificate for the repayment of expenses from the poor rate. The object was to allow the ecclesiastical authorities to retain the control of a closed churchyard, if they so wished, by meeting the expenses themselves.

By sect. 4 of the Parochial Church Councils (Powers) Measure, 1921 (*q*), the power, etc., of the churchwardens relating to the care and maintenance of the churchyard (including a closed churchyard) with all rights to recover from the overseers the cost of maintaining a closed churchyard from the overseers were transferred to the parochial church councils.

The next step was that overseers of the poor were abolished by sect. 62 of the R. & V.A., 1925 (*r*), and it devolved on the rating authority to satisfy any certificate under sect. 18 of the Burial Act, 1855, for the repayment of the expenses of keeping in order a churchyard or burial ground. [86]

The most recent provision is in sect. 269 (2) of the L.G.A., 1933 (*s*), which transfers the functions of a parochial church council as to the maintenance and repair of a closed churchyard, wherever after May 31, 1934, a certificate is given under sect. 18 of the Act of 1855, in a parish in a borough or urban district, or in a rural parish with a parish council. These functions of the parochial church council then pass to the council of the borough, urban district, or parish as the case may be. This provision does not of course affect parishes in which the transfer of the churchwardens' functions to the parish council took effect after the L.G.A. 1894, was passed and prior to May 31, 1934.

The expenses of maintenance of a closed churchyard are payable out of the general rate of the parish in which it is *situated*, notwithstanding that it may be the churchyard of some other parish (*t*).

Under Sched. V. to the P.H.A., 1875 (*u*), the council of a borough or urban district, who have been constituted a burial board, may repair, uphold, or take down and substitute other fences in lieu of fences surrounding any closed burial ground within their jurisdiction. They must also see that the ground is kept in a proper sanitary condition, take suitable steps to prevent desecration, and make bye-laws for the preservation and regulation of all burial grounds under their jurisdiction.

Where a burial ground, closed by Order in Council, belongs to a parish other than that in which it is situated, and contains a chapel (*a*), both that building and its site may, subject to the consent of the parochial church council and the bishop of the diocese, be conveyed under sect. 51 of the Burial Act, 1852 (*b*), by the incumbent and churchwardens of the former parish, to trustees appointed by the parish in which the chapel is situated.

There does not appear to be any obligation on a parish or a burial board to keep in repair the chapel of a closed burial ground. The obligation under sect. 18 of the Burial Act, 1855 (*c*), is merely to keep

(*g*) 6 Statutes 74.

(*r*) 14 Statutes 682.

(*s*) 26 Statutes 449.

(*t*) *R. v. Bishop Wearmouth Burial Board* (1879), 5 Q. B. D. 67; 7 Digest 551, 289. As to the necessary certificates, see *R. v. St. Mary, Islington Vestry* (1890), 25 Q. B. D. 523; 7 Digest 551, 290.

(*u*) 13 Statutes 781. See also title BURIAL AND BURIAL GROUNDS, Vol. II.

(*a*) As to chapels, see title CEMETERIES.

(*b*) 2 Statutes 207, as extended to places outside London by s. 7 of the Burial Act, 1858; 2 Statutes 213.

(*c*) 2 Statutes 224.

in decent order the ground itself, and repair the walls and fences (d).  
 [87]

**Building upon Disused Burial Grounds.**—Sect. 3 of the Disused Burial Grounds Act, 1884 (e), makes it unlawful to erect any buildings upon a disused burial ground except for the purpose of enlarging an already existing church, chapel, meeting-house or other place of worship; but there are exceptions where the burial ground has been sold or disposed of under the authority of some Act of Parliament, or where the building was erected under a faculty granted before the passing of the Act of 1884 (f). No fine is recoverable for a contravention of the Act, but an offender would presumably be liable either to indictment for misdemeanor, or to be restrained in an action by the Attorney-General.

As to what constitutes a “building,” the following decisions may be mentioned. A wall, which was to form a covered way for the protection of frescoes, painted on the side of the wall inside the ground was held not to offend the prohibition (g). A borough council petitioned for a faculty to convert a closed churchyard into an open space, proposing to erect a convenience and tool shed upon it. It was held that the former was a “building,” but the tool shed not, it being regarded as necessary for the laying-out and maintenance of the churchyard as an open space (h). The erection of swings and other structures was prohibited (*ibid.*). A brick building, to be erected for the purpose of containing electrical machinery, and whose roof did not project above the ground level, has been held to be a “building” (i).

By sect. 4 of the Open Spaces Act, 1887 (k), the term “building” in the Act of 1884, includes temporary or movable buildings, and “disused burial ground” means any burial ground, “which is no longer used for interments, whether or not the ground has been partially or wholly closed for burials under the provisions of any statute or Order in Council.” Furthermore, the prohibition as to building applies to the whole of the site set apart as a burial ground, whether used for burials or not (l).

The Act of 1884 does not include any provision authorising a local authority to enforce its provisions. [88]

**London.**—The provisions of the Burial Act, 1852 (m), as to the discontinuance of burials in the metropolis have already been dealt with. The metropolis for the purpose of this Act is, however, not co-extensive with the administrative County of London. It includes Willesden, but not Eltham, Lee, Kidbrooke or Lewisham; see sect. 53 of that Act and Schedule (A) thereto (n). Nor does the Act extend to prevent the interment in St. Paul’s Cathedral or Westminster Abbey of the body of any person, where a written permit under the royal sign manual is granted for such purpose (sect. 8).

(d) See Brooke Little, *Law of Burial*, 3rd ed., p. 175.

(e) 2 Statutes 279.

(f) *Disused Burial Grounds Act, 1884*, ss. 4, 5.

(g) *St. Botolph, Aldersgate Without (Vicar) v. St. Botolph, Aldersgate Without (Parishioners)*, [1900] P. 69; 7 Digest 552, 299.

(h) *Bermondsey B.C. v. Mortimer*, [1920] P. 87; Digest (Supp.).

(i) *St. Nicholas Acons (Rector, etc.) v. L.C.C.*, [1928] A. C. 469; Digest (Supp.).

(k) 2 Statutes 280.

(l) *Re Ponsford and Newport District School Board*, [1894] 1 Ch. 454; 7 Digest 551, 291; *L.C.C. v. Greenwich Corpns.*, [1929] 1 Ch. 305; Digest (Supp.).

(m) 2 Statutes 190.

(n) *Ibid.*, 208, 209.

With respect to buildings on disused burial grounds, power is given by the L.C.C. (General Powers) Act, 1897, sect. 49 (o), to the county council and metropolitan borough councils to erect on any disused burial grounds under their control sheds for plants and gardening implements. These authorities also have power under the L.C.C. (General Powers) Act, 1900, sect. 29 (p), to erect lavatories and conveniences on such disused burial grounds, but in this case subject to obtaining a faculty for the purpose where such burial grounds have been consecrated. The provisions of the Disused Burial Grounds Act, 1884 (q), as amended by sect. 4 of the Open Spaces Act, 1887 (r), extend to London, and the L.C.C. were the authority for enforcing those provisions by virtue of sect. 56 of the Metropolitan Board of Works (Various Powers) Act, 1885 (s). However these powers were transferred to the Common Council of the City and the borough councils together with certain disused burial grounds and other open spaces (t). [89]

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| (o) 11 Statutes 1221.  | (p) <i>Ibid.</i> , 1246. |
| (g) 2 Statutes 278.  | (r) <i>Ibid.</i> , 280.  |
| (s) 11 Statutes 1010.  |                          |
| (t) Transfer of Powers (London) Order, 1933; S. R. & O., 1933, No. 114; 26 Statutes 613. |                          |

## DITCHES

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*See also titles : HIGHWAY DRAINS ;  
LAND DRAINAGE ;  
SEWERS AND DRAINS.*

**Preliminary.**—A ditch may be defined as an artificial and open channel of a minor character available for the passage of water, but in which the flow of water is not necessarily constant; it is thus distinguishable from a watercourse, which for the purposes of the P.H.As., 1875 and 1925, appears to be a natural or artificial channel in which the flow of water is normally constant, or, at least frequent (a). The definition of watercourse in sect. 81 of the Land Drainage Act, 1930 (b), includes ditches, drains, cuts, sewers (other than sewers under the control of a local authority within the meaning of the P.H.A., 1875), and passages through which water flows. A ditch may become a

(a) Whether a channel is a watercourse is a question of fact : *Pearce v. Croydon R.D.C.* (1910), 74 J. P. 429; 41 Digest 8, 53 (bourne flow from chalk). As to watercourses, see also *A.-G. v. Lewes Corp.*, [1911] 2 Ch. 495; 76 J. P. 1; 41 Digest 9, 55; *Phillimore v. Watford R.D.C.*, [1913] 2 Ch. 484; 77 J. P. 453; 41 Digest 17, 128; and *Maxwell-Willsire v. Bromley R.D.C.* (1917), 82 J. P. 12; 41 Digest 31, 227.

(b) 28 Statutes 582.

sewer within sect. 4 of the P.H.A., 1875 (c), but, if "made for profit" would not vest in the local authority under sect. 13 of that Act.

The ownership of a ditch is usually ascertained by reference to the adjacent hedge (if any); the presumption is that a person making a boundary ditch digs it on the extreme boundary of his land, and makes on his own land a bank whereon the hedge is planted. In a few districts, where hedges are unusual, a ditch is frequently divisible between two adjoining owners, the boundary of their respective lands running along the centre of the ditch. Where no presumption of ownership arises from the position of a hedge, reference to enclosure awards, or proof of acts of ownership, or reference to maps or plans on title deeds, may be necessary in order to establish ownership.

The functions of local authorities in relation to ditches are derived from the Highway Act, 1835, the P.H.As., 1875 and 1925, the L.G.A., 1894, and the Land Drainage Act, 1930. [90]

**Drainage of Highways.**—Sect. 67 of the Highway Act, 1835 (d), allows a highway authority (as successors to the surveyor of highways) to make, scour, cleanse and keep open ditches, for the drainage of the highway, through any lands or grounds adjoining or lying near to the highway; the exercise of this right is subject to payment of compensation for any damage sustained by the landowner. Any person altering, obstructing or interfering with such ditches is liable to repay to the highway authority the cost of reinstatement, and is also to forfeit a sum not exceeding three times such cost (*ibid.*, sect. 68). A ditch running between a road and the fence of adjoining land may form part of the highway (e) and be maintainable as such by the highway authority, but this is a question of fact in each individual case. By sect. 29 (2) of the L.G.A., 1929 (f), drains (including ditches) belonging to county roads, except such roads in boroughs or urban districts as are maintained by the borough or U.D.C. under sect. 32 of that Act, vest in the county council, and that council also has the right of continuing to use any other drains or sewers for highway drainage, in the manner in which such drains or sewers were used immediately before April 1, 1930 (g). [91]

**Cleansing of Ditches.**—Sect. 48 of the P.H.A., 1875 (h), provides for the cleansing of open ditches lying near to, or forming the boundary between the districts of two local authorities; either authority may summon the other authority to appear before a court of summary jurisdiction, and the court may make an order for the execution of the necessary works, and as to the payment of the cost thereof. A person, not in default, who sustains damage by reason of the making and

(c) 13 Statutes 624. "Sewer" is there defined as including "sewers and drains of every description, except drains to which the word 'drain' interpreted as aforesaid (in s. 4) applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act." As to the vesting of sewers in local sanitary authorities, see P.H.A., 1875, s. 13; 13 Statutes 631.

(d) 9 Statutes 83.

(e) *Chorley Corpn. v. Nightingale*, [1907] 2 K. B. 637; 71 J. P. 441; 26 Digest 315, 472.

(f) 10 Statutes 903.

(g) Differences between a county council and a district council as to the vesting of a drain, or as to the use of a drain or sewer may be determined by the M. of H. (L.G.A., 1929, s. 29 (3); 10 Statutes 903).

(h) 13 Statutes 646.

execution of the order may claim compensation under sect. 308 of the Act of 1875 (*i*).

The order may impose the obligation to execute, and pay for, the work on the council from whose district offensive matter has come into the ditch, although the ditch is situate in the district of the other party to the proceedings (*k*).

A ditch so foul or in such a state as to be a nuisance or injurious to health, is by sect. 91 of the P.H.A., 1875 (*l*), a nuisance for the purposes of that Act, and may accordingly be dealt with summarily. It appears that this summary remedy would not be available as respects a ditch which has become a sewer, and is vested, as a sewer, in a local authority (*m*) ; but if the ditch has become a sewer, and is not such a sewer as vests in the sanitary authority under sect. 13 of the Act of 1875 (*n*), it would appear that the summary remedy for a nuisance is available. As to the procedure for dealing with a nuisance summarily, see sects. 94—96 of the P.H.A., 1875 (*o*). [92]

**Powers of P.H.A., 1925.**—Part V. (sects. 51—55) (*p*). Further powers of dealing with ditches are given by Part V. of this Act. This Part, or any of its sections, may be adopted by the council of a borough or urban district, but if that area has a population of under 20,000, according to the last published census, an adoption requires the consent of the M. of H. Part V., or any section comprised therein, may be applied to a rural district, or to any contributory place therein, by order of the M. of H. (*q*).

Sect. 51 of the P.H.A., 1925 (which is the only section in Part V. referring specifically to ditches), provides that if any ditch situated upon land laid out for building, or on which such land abuts, requires, in the opinion of the local authority, to be wholly or partially filled up or covered over, the council may require the owner of the land, before building operations are begun or proceeded with, to carry out necessary works, including piping the ditch and providing means of conveying surface water through the same. A failure to comply with the requirements in the council's notice renders the landowner liable to penalties. The section does not authorise the council to require the execution of works on the land of any person, other than the owner of the land laid out for building, without the consent of that person, nor may the rights of any person, other than the owner of the land laid out for building, be prejudicially affected (sect. 51 (3)) (*r*).

(*i*) 13 Statutes 755.

(*k*) *Woburn Union v. Newport Pagnell Union* (1887), 51 J. P. 694 ; 41 Digest 45, 330.

(*l*) 13 Statutes 661.

(*m*) Cf. *Fulham Vestry v. L.C.C.*, [1897] 2 Q. B. 76 ; 61 J. P. 440 ; 36 Digest 179, 236.

(*n*) 13 Statutes 631.

(*o*) *Ibid.*, 663, 664.

(*p*) *Ibid.*, 1137 *et seq.* These powers cannot be exercised with respect to any watercourse or ditch vested in the L.C.C. without the consent of that council ; see s. 12 of the Act ; 13 Statutes 1119.

(*q*) P.H.A., 1925, ss. 3, 4 ; 13 Statutes 1116. As to procedure on adoption or application for an order, see *ibid.*, ss. 4, 5, and Sched. III. ; 13 Statutes 1116, 1117, 1155.

(*r*) For definition of "owner," see P.H.A., 1875, s. 4, which is applied by s. 7 of the Act of 1925 ; 13 Statutes 1117. An appeal to Quarter Sessions against the notice lies under s. 7 of the P. H. A. Amt. Act, 1907, also applied by s. 7 of the Act of 1925. A local Act contained provisions similar to s. 51. The owner of land who intended to build sold a strip of the land running along the side of a

Sect. 52 of the P.H.A., 1925 (which applies to a ditch which is also a watercourse within the meaning of the P.H.As.), prohibits the culverting or covering over of a stream or watercourse, except in accordance with plans approved by the local authority ; but the local authority are not entitled to demand provision for the passage of any greater quantity of water than that which the landowner would have otherwise been obliged to receive or to permit to pass. If provision for extra water is made by agreement between the local authority and the landowner, the local authority must pay the additional cost involved (sect. 52 (3)).

Sect. 53 of the Act deals with the cleansing and repair of culverts, and may be applicable when a ditch has been partially culverted ; the owner or occupier may be required to repair, maintain and cleanse the culvert, and, in default the local authority may do the work, and recover the cost from him.

Sect. 54 of the Act, which also refers to watercourses and therefore is applicable to such ditches as are watercourses, declares that a watercourse so choked or silted up (1) as to obstruct or impede the proper flow of water along the same, *and* thereby to cause or render probable, an overflow from the watercourse on to adjacent land, or (2) as to hinder the usual effectual drainage of water through the same, is to be deemed a nuisance within the meaning of sect. 91 of the P.H.A., 1875 (s) (*ante*). No liability is imposed on any person other than the person by whose act or default the nuisance arises or continues ; it is, therefore, useless to serve a notice on the owner or occupier (under P.H.A., 1875, sect. 94) unless the person upon whom the notice is served can be proved to be the person legally responsible for the commencement or continuance of the nuisance. There is no liability at common law upon a riparian owner to scour the bed of a river if the obstruction caused is of natural growth (t). A liability may however exist by reason of tenure grant or covenant or under the Land Drainage Act, 1930 (u).

By sect. 55 of the P.H.A., 1925, the local authority may contribute the whole or part of the cost of works required for the purposes of Part V. of the Act, or may by agreement with the owners or occupiers execute any such works.

The foregoing functions under P.H.As., 1875 and 1925, are not exercisable by a county council except by agreement with a borough or district council for a relinquishment of their powers to the county council, or except where an order of the M. of H. has been made on a borough or district council being in default ; see sect. 57 (2), (3) of the L.G.A., 1929 (v). **[93]**

**Powers of Parish Councils.**—As respects parish councils, sect. 8 (1) (f) of the L.G.A., 1894 (a), empowers a parish council to deal with (*inter alia*) any open ditch containing, or used for the collection of, drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing or covering it, or otherwise preventing it from being prejudicial to health ; but private rights and the sewage or drainage

brook and thus cut off the bulk of his land from the brook. It was held that no notice to culvert could be given to the owner as his land did not abut on the brook, and no such notice could be given to the purchaser as he did not intend to build (*A.-G. v. Rowley Bros. and Oxley* (1910), 75 J. P. 81 ; 44 Digest 11, 39).

(s) 13 Statutes 661.

(t) *Hodgson v. York Corp.* (1873), 28 L. T. 836 ; 44 Digest 59, 429, and per Scrutton, L.G., in *Job Edwards, Ltd. v. Birmingham Navigations*, [1924] 1 K. B. 341, at p. 355.

(u) S. 35 (1) *post*, p. 56.

(v) 10 Statutes 922, 923.

(a) *Ibid.*, 780.

works of local authorities are not to be interfered with. The parish council may execute works in exercise of the foregoing power, and may contribute towards the cost of dealing with a ditch as aforesaid. Nothing in the foregoing powers derogates from the obligations of a district council in sanitary matters (*ibid.*, sect. 8 (3)). These powers may be conferred on the council of a borough or urban district by order of the M. of H. under sect. 271 of the L. G. A., 1933, or in a rural parish not having a separate parish council, on the parish meeting by an order of the county council under sect. 273 of that Act (b). [94]

**Land Drainage Act, 1930.**—Powers of dealing with certain ditches are also given to county and county borough councils by sect. 50 (2) of this Act (c), which provides that as regards any land in a county or county borough, whether or not the land is within a catchment area (d), the county or county borough council shall have the powers of a drainage board under sect. 35 of the Act (e). This last provision, as so applied, enables the county council to serve on a person by whose act or default the proper flow of water in a watercourse (f) is impeded, a notice requiring him to put the watercourse in proper order. This power arises only when the effect of the obstruction or impediment is to flood, or endanger, agricultural land in the occupation of some person other than the person in default. A right of appeal (g) to a court of summary jurisdiction, or to an arbitrator, is given to the recipient of the notice, and, subject to any appeal, the council may execute the required works in default of compliance with the notice within two months of the service of the notice, or of the final determination of any appeal, and recover summarily the cost thereof.

With regard to land not included in any catchment area, county and county borough councils are by sect. 50 (1) of the Act of 1930 (h), invested with the powers of a catchment board under sect. 10 (except sub-sect. (4)), and with the powers of a drainage board under sects. 36, 44 of that Act (i). These powers, which may occasionally be applicable to ditches, are as follows :

- (1) Sect. 10 (as applied by sect. 50), will enable the council, after proper notice, to exercise powers of a drainage board which are not being exercised at all, or are not being exercised to the necessary extent ;
- (2) Sect. 36 will enable the council to enforce any obligation to do any work in relation to a watercourse, when that obligation arises by tenure, custom, prescription or otherwise ;
- (3) Sect. 44 will enable the council to deal with mill dams, weirs or other like obstructions in watercourses ; this power might be brought into operation when slackers, dams or similar structures are placed in ditches used for drainage purposes.

(b) 26 Statutes 451.

(c) 23 Statutes 566.

(d) As to catchment areas, see Land Drainage Act, 1930, s. 2, and First Schedule ; 23 Statutes 530, 585.

(e) 23 Statutes 554. See also title DRAINAGE BOARDS.

(f) See definition *ante*, p. 52. As to the liability of the occupier, see s. 35 (1) of the Act of 1930 ; 23 Statutes 554.

(g) For grounds of appeal and procedure, see *ibid.*, s. 35 (4), (5), (6), (7) ; for further appeal to quarter sessions, see sub-s. (8).

(h) 23 Statutes 565.

(i) *Ibid.*, 538, 557, 561.

A further power of making and maintaining ditches is given to county and county borough councils by sect. 52 of the Land Drainage Act, 1930 (*k*), which provides for the preparation and execution of schemes for the drainage of small areas, either within or without a catchment area ; this power arises only when the case cannot be met by the constitution of a drainage district. [95]

**London.**—Under sect. 87 of the Metropolis Management Act, 1855 (*l*), sanitary authorities have power to cause ditches at the sides of or across public roads, bye-ways or footways, to be filled up and may substitute pipes or other drains. Under sect. 43 of the P.H. (London) Act, 1891 (*m*), it is their duty to have drained, covered, cleansed or filled up all ponds, ditches and other places where drainage or filth is collected, and to give written notice to the person causing such nuisance, or to the owner or occupier of the premises where it exists, requiring him to remove it in a time to be specified in the notice. In case of non-compliance a fine may be inflicted or the sanitary authority may enter on the premises and abate the nuisance, recovering the expenses from the owner. There is a right of compensation under the Metropolis Management Act, 1855, sect. 225 (*n*), if in the course of such abatement damage is done to any ancient mill or to any right to the use of water (*o*).

Persons aggrieved by any notice or act of the sanitary authority may appeal to the L.C.C., whose decision is final (*p*). [96]

(*k*) 23 Statutes 566.

(*l*) 11 Statutes 904.

(*m*) *Ibid.*, 1052.

(*n*) *Ibid.*, 939.

(*o*) P.H. (London) Act, 1891, s. 43 (2) ; 11 Statutes 1052.

(*p*) *Ibid.*, s. 43 (3).

## DIVERSION AND STOPPING UP OF HIGHWAYS

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HIGHWAYS, EXTINCTION OF ;  
MILITARY LANDS.

**Introductory.**—The subject of the diversion and stopping up of highways is one of the oldest in local government administration. It arises out of the common law rule—"once a highway, always a highway" ; in other words, a public highway cannot be extinguished by

the fact of non-user for any period, however long, "for the public cannot release their rights, and there is no extinctive presumption or prescription" (a). Owing to those changes in the circumstances surrounding the user of a highway which may arise during the passage of time, there has for long past been a means within the law whereby a highway may be either diverted or stopped up. Formerly this was attained by a procedure commenced in the Court of Chancery by a writ of *ad quod damnum*, and continued by inquiry in the county before a sheriff and jury. Although this procedure has fallen into disuse, the writ and procedure have never been abolished and presumably could still be used. But this method fell into desuetude after the passing of statutory provisions of an improved character, which are now contained in sects. 84—92 of the Highway Act, 1835 (b). A highway may, however, be extinguished by natural causes, as for instance, where its site is swept away by an encroachment of the sea (c). Again, a highway, or portion thereof, though not itself expressly stopped up or diverted, will be extinguished if public access to it at both ends is rendered impossible by the lawful stopping up of the only roads leading into it (d). [97]

An Act of Parliament may, of course, at any time put an end to a highway; it may do so either expressly or by implication, as, for instance, where a provisional order, confirmed by Parliament, authorised the construction of a pier, which would (as the plans showed) be physically inconsistent with the continued existence of an alleged public right of way (e). Local Acts frequently contain provisions thus dealing with particular highways.

The provisions of the Act of 1835 have been felt for many years to be unduly complicated and costly. They were the subject-matter of a report by a Departmental Committee of the Home Office in 1926 which recommended a radical improvement in the procedure. No alteration as advised by the report has yet been made by Parliament. An important administrative question will need to be decided when a Parliamentary Bill is brought forward, viz. whether the discretion to approve or disapprove a proposal to divert or stop up a highway shall remain with the justices of the peace as now, or the business be transferred to the local authority. The complicated nature of the present law makes it very necessary for any one concerned in obtaining an order to divert or stop up to observe the statutory provisions with exactness. A mistake in a single minor step in the procedure may lead to the failure of the project. (On the whole subject, see the title HIGHWAYS, EXTINCTION OF.) [98]

**Outline of Procedure.**—All ordinary diversions and stoppages are now carried out by means of an order of quarter sessions. An order is required even in cases where a very small area of highway is to have its legal status converted into private land again, and still more so is it the case when a give and take line, to improve the boundary of a

(a) *Dawes v. Hawkins* (1860), 8 C. B. (N. S.) 848, per BYLES, J., at p. 858; 26 Digest 295, 270.

(b) 9 Statutes 97—104.

(c) *R. v. Bamber* (1843), 5 Q. B. 279; 26 Digest 371, 964; *R. v. Hornsea* (1854), 23 L. J. (M. C.) 59; 26 Digest 372, 983.

(d) *Bailey v. Jamieson* (1876), 1 C. P. D. 329; 26 Digest 476, 1887.

(e) *Yarmouth Corp. v. Simmons* (1878), 10 Ch. D. 518; 26 Digest 477, 1895.

road is agreed between the highway authority and one or more land-owners (f).

Stated in outline, the procedure for stopping up or diverting a highway is as follows : The consents of certain public bodies must be obtained ; two justices must view the *locus in quo*, and if they approve of the proposed alteration, public notice of it must be given. Subsequently the two justices must formally certify that the road to be stopped up is unnecessary, or (in the case of a diversion) that the proposed new highway is nearer or more commodious than the old one. Their certificate is then lodged with the clerk of the peace, and, if there be no opposition, the justices at quarter sessions order the road to be stopped up or diverted accordingly, and the documents are enrolled as evidence of the proceedings ; if, however, notice of appeal be given, a jury must be impanelled who will try the issues of fact, and upon their verdict the fate of the proposal depends. In addition to sects. 84—92 of the Highway Act, 1835 (g), amending provisions will be found in sect. 144 of the P.H.A., 1875 (h), sects. 13, 25 of the L.G.A., 1894 (i), and sects. 29—38, 137 of the L.G.A., 1929 (k). [99]

**Scope of Statutory Provisions.**—In the construction of the Highway Act, 1835, the word highway is defined in sect. 5 (l) to mean all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements. The provisions of the Act of 1835, as to the diversion and stopping up of highways are extended by sect. 93 of the Act (m) to highways repairable *ratione tenuriae* whether by reason of any grant, tenure, limitation, or appointment of any charitable gift or otherwise. Owing to the exemption under sects. 112, 113 of the Act of 1835 (n), of roads repairable under local Acts, sect. 44 of the Highway Act, 1862 (o), later enacted that all the provisions of the Act of 1835 for diverting and stopping up highways should be applicable to all highways repairable under or by virtue of any local or personal Act, or within the limits of any such Act, except highways which any railway company, or the owners of any canal, river, or inland navigation, are liable by statute to make, maintain, repair or cleanse.

Sect. 84 of the Highway Act, 1835 (p), as originally enacted, provided that when the inhabitants in vestry assembled should deem it expedient that any highway should be stopped up, diverted, or turned, the chairman of the meeting shall direct the surveyor of highways to apply to two justices to view the highway, and if any other party desires to stop up, divert, or turn a highway, he shall require the surveyor to give notice to the churchwardens to assemble the inhabitants in vestry and submit to them the wish of such persons, and if the inhabitants agree, the surveyor shall apply to two justices to view. [100]

The council of the borough or urban district in which the highway is situated, or the council of the administrative county of which the rural district in which the highway is situated forms part, now possess the powers of the inhabitants in vestry assembled and execute the

(f) See *Portsmouth Corpn. v. Hall* (1907), 71 J. P. 564 ; 26 Digest 271, 106.

(g) 9 Statutes 97—104.

(h) 13 Statutes 683.

(i) 10 Statutes 785, 794.

(k) *Ibid.*, 903—913, 974.

(l) 9 Statutes 50.

(m) *Ibid.*, 104.

(n) *Ibid.*, 111.

(o) *Ibid.*, 139.

(p) *Ibid.*, 97.

office of surveyor of highways (outside London) (q). Proposals for the diversion or stopping up of a highway may originate either with any such council, acting as the successors of the vestry, or with some individual or corporate body other than such a council. In every case, however, the proposal must be supported by proof of the same facts to the satisfaction of two justices, and in the event of an appeal, to that of a jury; if the proposal be to stop up a highway, it must be shown that such highway is "unnecessary," if the proposal be to divert a highway it must be shown that the proposed new highway is "nearer," or "more commodious to the public," than the old one (r). Both these matters are, of course, questions of fact. It is permissible to stop up or divert a highway "reserving a bridleway or footway along the whole or any part or parts thereof" (s). It is not necessary that a proposed "new" road should be actually a new one or that its termini should be identical with those of the way to be stopped up; it is sufficient if extra land be thrown into another existing way so as to make it in its new form more commodious than the one to be stopped up (t), or (in the other case), if the "new" road gives access to highways along which the public may reach the termini of the "old" road (u). As to the meaning of the new highway being "nearer" than the old one, the measurements must be taken, not between the villages or towns ultimately connected by the old and new roads, but between the termini of the portion of the old road to be stopped up (a). With regard to the relative convenience of an old and a proposed new road, the following are instances of points taken by the promoters of a project for diversion: That the new road will be wider, straighter, or better made than the old one; that it will be enclosed, instead of being a field track liable to be ploughed up and requiring to be retrodden every year; or that it will be better surfaced, drier, or less liable to floods, or freer from gates and stiles. Where it is proposed to stop up or divert more than one highway, and such highways are so connected together that they cannot be separately stopped up or diverted without interfering one with the other, they may be included in one order or certificate (b). [101]

**Consents.**—When an individual desires to stop up or divert a highway, the first step in order to set in motion the procedure under the Highway Act, 1835, is to give notice to the borough or U.D.C., if the highway is situate in a borough or urban district and is not a county road vested in a county council. The term "county road" includes (1) any road in an administrative county which immediately prior to April 1, 1930, was a main road, (2) all roads in non-county boroughs and urban districts which are "classified" by the Ministry of Transport, and (3) all highways in rural districts which are repairable by the inhabitants at large. The council of a non-county borough or urban district with a population exceeding 20,000 may claim, under certain

(q) P.H.A., 1875, s. 144; 13 Statutes 683; L.G.A., 1894, s. 25 (1); L.G.A., 1929, s. 30; 10 Statutes 794, 904. As to the exercise of the powers of the vestry by county councils see Pratt and Mackenzies' Law of Highways (18th ed.) pp. 256—259.

(r) Highway Act, 1835, s. 85; 9 Statutes 99. It is not necessary to shew that it is both nearer and more commodious (*R. v. Phillips* (1866), L. R. 1 Q. B. 648; 26 Digest 477, 1900).

(s) Highway Act, 1835, s. 84; 9 Statutes 97.

(t) *R. v. Phillips*, *supra*.

(u) *De Ponthieu v. Pennyfeather* (1814), 1 Marsh. 261; 26 Digest 477, 1901.

(a) *R. v. Shiles* (1841), 1 Q. B. 919; 26 Digest 478, 1904.

(b) Highway Act, 1835, s. 86; 9 Statutes 101.

circumstances, and within stated periods, to exercise the functions of maintenance and repair of any county road in their borough or district, in which case the road vests in the borough or district council (*c*). Otherwise all county roads are vested in the county council. County roads within a county borough are vested in the county borough council, and those councils are invested with the powers, duties and liabilities of the surveyors of highways and of the inhabitants in vestry assembled (*d*). The county borough council under sect. 34 of the L.G.A., 1888 (*e*), exercises the functions of a county council except as provided by sub-sect (3) of that section. [102]

If the road is situate in a non-county borough or urban district and is a county road vested in a county council, the notice should be sent to the county council in its capacity of surveyors of highways (*f*) ; but the consent of the borough or U.D.C. is also necessary as the body exercising the powers of the inhabitants in vestry assembled. In the case of a highway situate in a rural district, notice should be given to the county council, who have replaced the R.D.C. as the surveyor of highways. The county council now also exclusively exercise in rural districts the functions of the vestry under sect. 84 of the Highway Act, 1835 (*g*). The notice must in each instance be in writing, and should be accompanied by any plans necessary to explain the proposal (*h*). If, upon consideration, the council refuse their consent, the matter is at an end, although the application may, in reasonable circumstances, later be renewed. If the council pass the necessary resolution approving of the proposal, the next step is to request two justices to view the *locus in quo*, and subsequently to give the statutory certificate. In a rural district, further consents must be obtained, viz. the consents of the council of the district and parish in which the highway in question lies (*i*) ; the parish council must give public notice of their resolution to give any such consent, and the resolution will not operate unless it is confirmed by the parish council at a meeting held not less than two months after the public notice is given, nor if the parish meeting should resolve that the consent ought not to be given (*k*). In a rural parish not having a parish council, the same provisions apply with the substitution of the parish meeting for the parish council (*l*). It is not, apparently, necessary that the consent of the district council or the parish should be obtained before the justices certify ; but, as the proposal can go no farther if either of such consents be refused, it is desirable that these consents should be obtained as a first step and before notice of the project is given to the county council. One other consent is necessary in every case of diversion, viz. a consent in writing of the owner, or owners, of the land through which any new highway is to run (*m*). It is sufficient for their consent to be under hand only ;

(*c*) See L.G.A., 1929, ss. 29 (1), 32 ; 10 Statutes 903, 906.

(*d*) See P.H.A., 1875, s. 144 ; 13 Statutes 683.

(*e*) Ss. 31, 34 ; 10 Statutes 708, 711.

(*f*) L.G.A., 1888, s. 11 (1), (12) ; *ibid.*, 693, 695.

(*g*) See Pratt's "Highways," 18th ed., pp. 256—259, where the matter is discussed.

(*h*) Highway Act, 1835, s. 84 ; 9 Statutes 97. Useful forms of notices, resolutions, and other documents connected with the stoppage and diversion of highways will be found in 7 Ency. Forms, 195 *et seq.*

(*i*) L.G.A., 1894, s. 13 (1) ; 10 Statutes 785.

(*k*) *Ibid.*

(*l*) *Ibid.*, s. 19 (8) ; 10 Statutes 791.

(*m*) Highway Act, 1835, s. 85 ; 9 Statutes 99.

but it must be under the hand of the owner himself, and not of his agent or solicitor (*n*). If given under a power of attorney, it will be valid, provided the power of attorney also be enrolled at sessions with the consent (*o*). [103]

**Who Conducts Proceedings.**—A diversity of opinion and practice exists as to who should have the conduct of the proceedings. In some localities as soon as the county council or borough or district council, as the case may be, have deemed it expedient that the proposal shall proceed, the clerk (or sometimes the surveyor) assumes the conduct of the whole of the proceedings, applying (if not already done) for the consents of the borough or district council, and that of the parish council or meeting in a rural district, and requesting two justices to view and certify, etc. In other localities the solicitor to the person proposing the diversion is permitted, if not expected, to take the necessary steps in the name of the council's officer. Whoever does the work, the author of the scheme is responsible for the "expenses" (*p*) ; but, if the council's officer acts in the matter, he is not entitled (in the absence of an express agreement) to employ a solicitor to advise him, and to charge the applicant with the costs of such solicitor (*q*).

Where a proposal for the diversion or stopping up of a highway originates with a county or borough or U.D.C., acting as successors of the inhabitants in vestry assembled, it will, of course, be embodied in a formal resolution ; and the same consents must be obtained, and the subsequent procedure will be the same as in the case of a scheme proposed by an individual. In such cases an officer of the council will be appointed to carry the matter through. [104]

**The Justices' View and Notices.**—In the event of the county or borough or U.D.C., as the case may be, deciding that the matter shall proceed, the next step is to request two justices to view together the *locus in quo*. It should be arranged, if possible, that three justices view, so that any two of them can act in the subsequent proceedings if one is ill, or goes abroad, or otherwise becomes unavailable. The proceedings by the county council as representing the inhabitants in vestry assembled and the surveyor of highways, and the view and certificate by the justices, may run concurrently with and independently of the consents of the R.D.C. and parish council. If upon such view it appears to them that the highway in question may be diverted and turned so as to make the same nearer or more commodious to the public or is unnecessary, they must direct the surveyor to affix a notice in legible characters, at the place and by the side of each end of the highway from whence the same is proposed to be turned, diverted, or stopped up, and also to insert the same notice in one newspaper published or generally circulated in the county where the highway shall lie, for four successive weeks next after the justices have viewed such highway, and to affix a like notice on the door of the church of every parish in which the highway or any part thereof, shall lie, on four successive Sundays next after the making such view (*r*).

(*n*) *R. v. Kent J.J.* (1823), 1 B. & C. 622 ; 26 Digest 479, 1916.

(*o*) *R. v. Crewe* (1823), 3 Dow. & Ry. (K.B.) 6 ; 26 Digest 479, 1916.

(*p*) *Highway Act, 1835*, s. 84 ; 9 Statutes 97.

(*q*) *United Land Co. v. Tottenham Local Board* (1884), 13 Q. B. D. 640 ; 26 Digest 476, 1890.

(*r*) *Highway Act, 1835*, s. 85 ; 9 Statutes 99.

In the event of the two justices first applied to declining to approve of the proposal, it is competent for two other justices to view and grant a certificate (s). [105]

Three different kinds of notification are thus necessary. First, a notice must be affixed by the side of the highway at each end of that portion of it which is to be dealt with in the certificate (t). In a case where three roads in the shape of a letter Y were dealt with at the same time, but by different certificates, it was held that the point of intersection was an "end" within the meaning of this provision, and that notices ought to have been affixed there (u). It is not necessary that the notices shall remain for the full period of twenty-eight days (a). Secondly, the notice is to be inserted in a local newspaper for four successive weeks next after the view; an insertion in one weekly paper in each of these weeks is sufficient (b). Thirdly, the notice must be affixed on the door of the church in every parish in which the portion of the highway to be dealt with may be situated (c); and it must be so affixed on the four successive Sundays next after the view. It is important to observe that the notice must be inserted in the newspaper in the week after the view and the notice affixed to the church doors on the Sunday next after the view. "These are requirements which cannot be dispensed with" (d).

The form of notice should follow that given in the schedule to the Act of 1835 (e). Although that form contains a blank for the insertion of the date on which the application is proposed to be made to the quarter sessions, it is not necessary to state the date in the notice; it is sufficient if it states that the application will be made to the quarter sessions held next after the expiration of four weeks from the date of the lodgment of the certificate (f).

It must give such a full and accurate description of the highway to be stopped or diverted, and also (in the latter case) of the proposed new highway, as will be intelligible without reference to any plan (g), and will enable a person reading it to recognise the highway to be affected and the nature of the proposed alterations. Although the description should not contain a reference to any plan, a plan will, as a matter of course, be prepared for the use of the various councils and the justices. [106]

**The Justices' Certificate.**—The same two justices may proceed to certify as soon as the several notices have been so published, which may in many cases be rather less than four weeks after their view (h). They must have proof to their satisfaction of the publication of the notices, and a plan must be delivered to them particularly describing the old and the proposed new highway, by metes, bounds and ad-measurement thereof, and this plan must be verified by some competent

(s) *R. v. Kent JJ.*, [1904] 2 K. B. 349, reversed on other grounds in Court of Appeal, [1905] 1 K. B. 378; 26 Digest 481, 1925.

(t) *R. v. Surrey JJ.*, [1892] 1 Q. B. 633, 867; 26 Digest 481, 1924.

(u) *R. v. Surrey JJ.* (1870), L. R. 5 Q. B. 466; 16 Digest 422, 2822; 26 Digest 480, 1922.

(a) *R. v. Kent JJ.*, [1905] 1 K. B. 378; 26 Digest 481, 1925.

(b) See *R. v. Kent JJ.*, *supra*.

(c) As to this, see *R. v. Surrey JJ.*, *supra*.

(d) Per COLLINS, M.R., in *R. v. Kent JJ.*, C. A., *supra*, at p. 384.

(e) Form 19; 9 Statutes 121.

(f) *R. v. Derby JJ.*, [1917] 2 K. B. 802; 26 Digest 480, 1921.

(g) *R. v. Horner* (1831), 2 B. & Ad. 150; 26 Digest 480, 1920.

(h) See *R. v. Kent JJ.*, *supra*.

surveyor (*i*). The lengths and widths of the old and new highways should be set out on the plan (*k*). The usual course is for the justices to take at the same time, in the form of depositions, the evidence of the surveyor who verifies the plan, of some person or persons as to the affixing of the notices and the publication of the advertisements, and of the clerks of the various councils to prove the passing of the resolutions of approval. In cases of diversion, they should also take evidence of the owner's consent. It is a convenient practice for these depositions to be drafted by the person having the conduct of the proceedings, and submitted by him to the clerk of the justices beforehand. As soon as the necessary evidence has been taken, the justices may proceed to certify without a second view; the certificate is to be under their hands, and should state the fact of their having together viewed the highway, and that any proposed new highway is nearer or more commodious to the public; and if nearer, the number of yards or feet it is nearer, or if more commodious, the reasons why it is so; and if the highway is proposed to be stopped up as unnecessary, then the certificate must state the reason why it is unnecessary (*i*).

The certificate ought to show unequivocally that the justices formed their conclusions from their own joint view (*i*). So long as it appears that the reasons which influenced their decisions were "disclosed by the view upon their own personal inspection," the certificate will not be invalidated merely because it shows that the justices also made inquiries from third persons (*m*). [107]

**Lodgment of Documents.**—As soon as conveniently may be after the making of the certificate, the certificate together with the proofs and plan must be lodged with the clerk of the peace for the county or borough, as the case may be (*n*). The various consents should also be lodged; they will, in most cases, be exhibited and annexed to the proofs.

Before enrolment, any person is entitled to inspect the certificate and plan, and to have a copy thereof on payment to the clerk of the peace at the rate of 6d. per folio and a reasonable compensation for the copy of the plan (*o*). [108]

**Enrolment and Order.**—At the quarter sessions held next after the expiration of four weeks from the day of lodgment a motion, usually by counsel, must be made in court for an order to divert and turn or stop up, or such other order as may be proper (*p*). Assuming no notice of appeal has been given, it is the duty of the sessions to satisfy themselves that the certificate comes before them correct on the face of it and accompanied by plan and proof such as the statute requires (*q*); if they are satisfied as to this, they must, as a matter of course (*r*), make the order asked for. [109]

**Final View and Certificate.**—If the proposal be for a diversion, before the old highway may be stopped up, the new highway must be

(*i*) Highway Act, 1835, s. 85; 9 Statutes 99.

(*k*) *R. v. Surrey JJ.*, [1908] 1 K. B. 374; 26 Digest 483, 1945.

(*l*) *R. v. Wallace* (1879), 4 Q. B. D. 641; 26 Digest 482, 1938.

(*m*) *R. v. Kent JJ.*, [1904] 2 K. B. 349; 26 Digest 481, 1925. For a form of certificate, see 12 Ency. Forms, p. 607.

(*n*) Highway Act, 1835, s. 85; 9 Statutes 99.

(*o*) *Ibid.*

(*p*) *Ibid.*, s. 91; 9 Statutes 103.

(*q*) *R. v. Worcestershire JJ.* (1854), 3 E. & B. 477; 26 Digest 482, 1940.

(*r*) Highway Act, 1835, s. 91; 9 Statutes 103.

completed and put into good condition and repair, and so certified by two justices upon view ; this certificate must be returned to the clerk of the peace and by him enrolled amongst the records of the court of quarter sessions next after the diversion order shall have been made (s).

【110】

**Effect of Order.**—The effect of such an order of quarter sessions as regards an old road ordered to be stopped up or diverted, is that the person who hitherto has owned the soil subject to a public easement or right of way, becomes the owner of the soil freed from any such public burden and may deal with it as he thinks fit, subject of course to the requirement as to first completing any substituted road (t). A duty is imposed upon persons who divert a highway to protect by fencing or otherwise the public from going astray at the point of diversion (u).

Any new road substituted by the order for an old road becomes at once a public highway, but not necessarily one repairable by the inhabitants at large ; in this respect it follows the status of the old road, and the liability for its repair will rest upon the person responsible for the repair of the old road, and without regard to its parochial locality (a). A method is provided by which the liability *ratione tenuræ* of an individual may be commuted by the payment of an annual or lump sum to the highway authority (b).

Sect. 91 of the Highway Act, 1835 (c), provides that the proceedings on an order of the sessions shall be binding and conclusive on all persons whomsoever : but notwithstanding these words an order made without jurisdiction may be quashed on *certiorari*, and it would appear that the validity of such an order may also be called in question in an action for trespass (d).

Although no order can be produced, the due making of an order of sessions may be presumed in accordance with the principle that all things are presumed to have been rightly and duly performed until it is proved to the contrary (e). 【111】

**Appeals. Notices.**—When two justices have given a certificate, any person who may think that he would be injured or aggrieved if any such highway should be ordered to be diverted and turned or stopped up, and such new highway set out and appropriated in lieu thereof, or if any unnecessary highway should be ordered to be stopped up, may appeal to quarter sessions (f).

Where an order or certificate deals with more than one highway, the whole, or a part only, of the order may be appealed against (g).

(s) Highway Act, 1835, s. 91 ; 9 Statutes 103 ; *De Ponthieu v. Pennyfeather* (1814), 1 Marsh. 261 ; 26 Digest 477, 1901.

(t) *R. v. Wallace* (1879), 4 Q. B. D. 641 ; 26 Digest 482, 1938.

(u) *Hurst v. Taylor* (1885), 14 Q. B. D. 918 ; 49 J. P. 359 ; 26 Digest 477, 1897.

(a) Highway Act, 1835, s. 92 ; 9 Statutes 104. See *Kingston-upon-Thames Corp. v. Baverstock* (1909), 73 J. P. 378 ; 26 Digest 486, 1988.

(b) *Ibid.*, s. 93 ; 9 Statutes 104.

(c) 9 Statutes 103.

(d) See *Welch v. Nash* (1807), 8 East, 394 ; *R. v. Phillips* (1866), L. R. 1 Q. B. 648 ; 26 Digest 477, 1898, 1900.

(e) *Williams v. Egton* (1858), 2 H. & N. 771 ; (1859), 4 H. & N. 357 ; *Manning v. Eastern Counties Rail. Co.* (1848), 12 M. & W. 237 ; *Leigh U.D.C. v. King*, [1901] 1 K. B. 747 ; 26 Digest 486, 1990, 1989 ; 363, 882 ; 487, 1991.

(f) Highway Act, 1835, s. 88 ; 9 Statutes 101.

(g) *Ibid.*, s. 87.

The notice of appeal must be served on the county council, borough or U.D.C. as surveyors of highways in rural or urban districts respectively, and must be so served fourteen clear days (no longer ten only) (*h*) before the quarter sessions to which the application is to be made. These days are to be reckoned exclusively both of the day of serving the notice and the day of holding quarter sessions. If the proposal originated with some individual or body other than the council in question, the recipient of the notice must within forty-eight hours deliver a copy to such individual or body (*i*).

The appeal lies to the quarter sessions for "the limit" within which the highway lies (*k*). This expression means the original sessions for the county or riding, etc., as a whole, and not any adjournment thereof for the particular district in which the highway lies (*l*). [112]

*Grounds of Appeal.*—A statement of the grounds of appeal must be served with the notice of appeal (*m*). In such statement the appellant must either state expressly that he is aggrieved by the certificate, or set out facts from which it will be apparent that he is so aggrieved (*n*). To be inconvenience in common with the rest of the general public is not sufficient. The appellant must have a peculiar grievance of his own, as for instance, where a person lives near to and is in the habit of using a highway, and frequently will have to take a more circuitous route if it be stopped up (*o*). It must be remembered that Baines' Act (*p*) renders any objection to the form of grounds of appeal futile, if sessions think the grounds are sufficient, or allow an amendment (*q*). No recognisance is necessary.

Upon the appeal being called on, the appellant begins, and must first prove service of his notice of appeal, unless this be admitted. He must confine his case within the limits of his grounds of appeal, but he may, of course, obtain leave to amend his statement of grounds. If the respondent calls evidence, the appellant will be entitled to reply on the whole case.

So far as the appellant's objections are matters of law arising out of the certificate, they are questions for quarter sessions to decide, and their decision is final unless they consent to state a case, or unless there be at some stage of the proceedings a defect of jurisdiction forming ground for *certiorari* (*r*). If they consider the certificate defective, but there is evidence before them showing that all requirements were in fact complied with, they may amend the certificate (*s*) and no appeal lies from their decision to do so (*t*).

If the certificate be held to be good a jury of twelve disinterested

(*h*) Quarter Sessions Act, 1849 (Baines' Act), s. 1; 11 Statutes 293; and *R. v. Maule* (1871), 41 L. J. (M. C.) 47; 26 Digest 484, 1960.

(*i*) Highway Act, 1835, s. 88; 9 Statutes 101.

(*k*) See s. 85 of the Act of 1835; 9 Statutes 99.

(*l*) *R. v. Lancashire JJ.* (1857), 8 E. & B. 563; 26 Digest 484, 1963; see also *R. v. Suffolk JJ.* (1848), 17 L. J. (M. C.) 143; 26 Digest 484, 1962.

(*m*) Act of 1835, s. 88; 9 Statutes 101.

(*n*) *R. v. West Riding JJ.* (1833), 4 B. & Ad. 685; 26 Digest 485, 1968.

(*o*) *R. v. West Riding JJ.*, *supra*; *R. v. Taunton* (1815), 3 M. & S. 465; 26 Digest 380, 1970; *R. v. Adey* (1835), 4 Nev. & M. (K. B.) 365; 26 Digest 485, 1969.

(*p*) Quarter Sessions Act, 1849 (Baines' Act), s. 3; 11 Statutes 294.

(*q*) For forms of notices and grounds of appeal, see 7 Ency. Forms 206.

(*r*) See *R. v. Worcestershire JJ.* (1854), 3 E. & B. 477; 26 Digest 482, 1940; *R. v. Harvey* (1874), L. R. 10 Q. B. 46; 26 Digest 482, 1941; *R. v. Surrey JJ.* (1870), L. R. 5 Q. B. 466; 26 Digest 480, 1922; *R. v. Kent JJ.*, [1904] 2 K. B. 349; 26 Digest 481, 1925.

(*s*) See *R. v. Harvey*, *supra*.

(*t*) Quarter Sessions Act, 1849 (Baines' Act), s. 9; 11 Statutes 295.

men out of persons summoned as jurymen to serve at such quarter sessions must try the following issues: whether the proposed new highway is nearer or more commodious to the public, or whether the highway to be stopped up is unnecessary (as the case may be), and whether the appellant will be injured or aggrieved. In accordance with their verdict the court will either allow or dismiss the appeal (*u*).

If the appeal be dismissed, they must, as a matter of course, make the order asked for (*a*). Where an order or certificate deals with more than one road an appeal may be successful in part only, and the court may confirm part of such order or certificate while quashing the remainder (*b*). [113]

**Costs.**—Where notice of appeal has been given, the court must award to the party giving or receiving notice of appeal such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall be tried or not; such costs and expenses are to be paid by the council acting as the surveyor, or other party at whose instance the notice for diverting and turning or for stopping up the highway was given; and in case the council acting as surveyor or the other party does not appear, the court is to award the costs of the appellant to be paid by such council or other party (*c*). The costs may be recovered summarily (*d*). They may be taxed out of court by consent; but, if either party fail to appear, the amount must, of course, be ascertained before the sessions are ended (*e*). [114]

**Special Case.**—On an appeal, the court is empowered to state a special case (*f*). [115]

**Churchyards.**—There are special statutory provisions with regard to the stopping up of ways leading to parish churchyards (*g*). The Ecclesiastical Commissioners may stop up and discontinue, or alter, or vary any entrance or gate leading into any churchyard or parish burial ground, and the paths, footways, and passages into, through, or over the same, which may appear useless and unnecessary, or as they shall think fit to alter or vary; but the consent of two justices of the peace must be obtained on notice being given in the manner and form prescribed (*h*). The notice must be given before the order of the Commissioners is made so that they may be apprised of any objection (*i*). The order is, however, final, and not subject to appeal, though if made without jurisdiction it may be quashed on *certiorari* (*k*). [116]

**Housing.**—Under sect. 13 of the Housing Act, 1930 (*l*), a local authority may, with the approval of the M. of H., by order extinguish

(*u*) Highway Act, 1835, s. 89; 9 Statutes 102.

(*a*) *Ibid.*, s. 91.

(*b*) *Ibid.*, s. 87; and see hereon *R. v. Midgley Local Board* (1864), 33 L. J. (M. C.) 188; 26 Digest 478, 1908.

(*c*) Highway Act, 1835, s. 90; 9 Statutes 103.

(*d*) *Ibid.*, s. 103; 9 Statutes 108. For an alternative mode of recovery, see Baines' Act and the Summary Jurisdiction Acts.

(*e*) *Selwood v. Mount* (1841), 1 Q. B. 726; 18 Digest 431, 1683; *Ex parte Holloway* (1831), 1 Dowl. 26; 38 Digest 616, 1409.

(*f*) Highway Act, 1835, s. 108; 9 Statutes 110.

(*g*) Church Building Act, 1819, s. 39; 6 Statutes 742.

(*h*) Highway Act, 1815, s. 2; 6 Statutes 743 (footnote).

(*i*) *R. v. Arkwright* (1848), 12 Q. B. 960; 19 Digest 528, 3893.

(*k*) *R. v. Stock* (1838), 8 Ad. & El. 405; 19 Digest 527, 3891.

(*l*) 23 Statutes 406.

any public right of way over land purchased by the local authority for a clearance or improvement scheme under Part I. of that Act, subject to the publication of the order in the manner prescribed by the Minister's regulations (*m*). If any objection is made to the order within six weeks from its publication, the Minister must not approve the order until a public inquiry has been held. [117]

**Railways.**—The provisions of the Railways Clauses Consolidation Act, 1845, unless expressly varied or excepted, apply to railways constructed under Acts of a subsequent date; they also apply to light railways constructed under orders of the Light Railway Commissioners, or their successor the Minister of Transport, so far as they are incorporated by such orders. The more important relevant provisions of the Act of 1845 authorise the temporary or permanent diversion of a highway (*n*); but a company cannot divert a road simply to avoid expense, if it is not "necessary" to do so (*o*); the company must, before interfering with a road, provide a substituted road, and in the case of a temporary diversion maintain such substituted road in good condition until the old road is restored (*p*). There is a penalty for not providing a substituted road (*q*). Provision is made for the restoration of roads which have been interfered with, and the time within which such restoration must be effected (*r*). [118]

**Town and Country Planning.**—Highways may be stopped up or diverted by a scheme promoted by a local authority or authorities and sanctioned by the M. of H. under the Town and Country Planning Act, 1932 (*s*). See title TOWN PLANNING SCHEMES. [119]

**London.**—The Highway Act, 1835, extends to London (*t*). The better practice is, however, to proceed instead, where the facts permit, under the Metropolitan Paving Act, 1817 (*u*). By sect. 79 of that Act (*a*), where any court, alley or place within the limits of the Act (now practically identical with the area of the County of London) is the subject-matter of a proposed stopping up, it may be closed by an order of the justices in special sessions on the certificate of two justices that it is unnecessary and that no inconvenience would be caused to the public, provided the authority controlling such court, alley or place and four-fifths of the owners of adjoining houses consent. Proceedings under the section have been successfully taken in the case of a short street. A convenient procedure is for the appropriate metropolitan borough council to pass a formal resolution declaring the *locus in quo* to be unnecessary, and direct application to be made to the justices to view the same and give their certificate. Information and complaint is then made by the borough surveyor, followed by precept and notice in pursuance of precept. The consent of the council is lodged, with

(*m*) See S. R. & O., 1932, No. 159.

(*n*) S. 16; 14 Statutes 37.

(*o*) See *Pugh v. Golden Valley Rail. Co.* (1880), 15 Ch. D. 330; 38 Digest 261, 60.

(*p*) See Act of 1845, s. 53; 14 Statutes 50; *A.-G. v. Barry Docks and Rail. Co.* (1887), 35 Ch. D. 578; 38 Digest 277, 156.

(*q*) *Ibid.*, s. 54; 14 Statutes 51.

(*r*) *Ibid.*, ss. 56, 57; 14 Statutes 51, 52.

(*s*) S. 11 and Sched. II., para. 1; 25 Statutes 484, 528.

(*t*) *Back v. Holmes* (1887), 51 L. J. (M. C.) 37; 51 J. P. 693.

(*u*) Michael Angelo Taylor's Act, 1817; 11 Statutes 838 *et seq.*

(*a*) 11 Statutes 863.

a deposition proving the same, and a deposition of the borough surveyor proving the plan ; consents of owners of adjoining lands and any other exhibits are also lodged. Sect. 133 of the Act (b) gives a right of appeal to quarter sessions to any person aggrieved by the justices' order for a stopping up. [120]

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(b) 11 Statutes 875.

## DIVIDENDS

*See INTEREST.*

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## DOCKS

*See HARBOURS.*

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## DOCUMENTS OF LOCAL AUTHORITY, RIGHTS AS TO INSPECTION AND COPIES OF

*See RECORDS AND DOCUMENTS.*

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## DOG LICENCES

*See DOGS ; LOCAL TAXATION LICENCES.*

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# DOGS

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*See also titles :*    BYE-LAWS ;  
                           DISEASES OF ANIMALS ;  
                           LOCAL TAXATION LICENCES ;  
                          As to Dog Racecourses, see title RACECOURSES.

**Introductory.**—A dog is a domestic animal, involving its owner, the local authority (*a*) and even the general public in certain duties and liabilities.

At common law, the owner of a domestic, as opposed to a wild, animal was only liable for injury done by it on proof of *scienter*, i.e. on previous knowledge of the mischievous propensities of the animal (*aa*). But an owner of a dog is liable, even though thirty minutes had alone elapsed, since he had learned of the disposition of his dog to bite (*b*). Where a dog has injured cattle or poultry, it is not necessary for a person seeking damages to prove a previous mischievous propensity, or the owner's knowledge of such propensity, or to show that the injury was attributable to neglect on the part of the owner (*c*). Where any such injury has been done by a dog, that is, presumably, to cattle or poultry, the occupier of any house or premises where the dog was kept or permitted to live or remain at the time of the injury is to be presumed to be the owner of the dog and is liable unless he proves that he was not its owner at that time (*d*). If dogs belonging to different owners attack sheep, each owner is, in law, responsible for the whole damage (*e*).

The owner of a dog is liable for a provoked, but not an unprovoked trespass of the animal (*f*).

At common law, a live dog was not the subject of larceny, but this defect was cured by sects. 18, 19 of the Larceny Act, 1861, and sect. 5 of the Larceny Act, 1916 (*g*).

(*a*) In *Knott v. L.C.C.*, [1934] 1 K. B. 126 (Digest Supp.) an action against the council for damage inflicted by a ferocious dog on their premises kept there under a permission contained in their rules by a school keeper in their employment, failed as the dog was kept as a pet and not for any purpose of the L.C.C.

(*aa*) *Mason v. Keeling* (1699), 1 Ld. Raym. 606; 2 Digest 243, 274.

(*b*) *Parson v. King* (1891), 8 T. L. R. 114; 2 Digest 245, 287. See also *Buckle v. Holmes*, [1926] 2 K. B. 125; Digest (Supp.).

(*c*) Dogs Act, 1906, s. 1; 1 Statutes 351; Dogs (Amendment) Act, 1928; 1 Statutes 355.

(*d*) Dogs Act, 1906, s. 1 (2). Cf. *Gardner v. Hart* (1896), 12 T. L. R. 347; 2 Digest 247, 309, and *North v. Wood*, [1914] 1 K. B. 629; 2 Digest 240, 255.

(*e*) *Arneil v. Paterson*, [1931] A. C. 560; Digest (Supp.).

(*f*) See *R. v. Pratt* (1855), 4 E. & B. 860; 2 Digest 227, 186; *Dimmock v. Allenby* (1810), cited 2 Marsh at p. 582; 2 Digest 227, 184; *Sanders v. Teape and Swan* (1884), 51 L. T. 263; 2 Digest 227, 188; *Hines v. Tousley* (1926), 95 L. J. (K. B.) 773, C. A.; 34 Digest 499, 4114.

(*g*) 4 Statutes 545, 817.

As respects the responsibility of a person who is not the owner of the dog, sect. 6 of the Dogs Act, 1906, as amended by sect. 3 of the amending Act of 1928 (*h*), imposes a fine not exceeding 40*s.* on any person who knowingly and without reasonable excuse permits the carcase of any head of cattle belonging to him or under his control to remain unburied in a field or other place to which dogs can gain access.

**[121]**

**Licences.**—By the Dog Licences Act, 1867 (*i*), as amended by sects. 17—23 of the Customs and Inland Revenue Act, 1878 (*j*), and other enactments, the owner or keeper of a dog aged six months or over must obtain a dog licence, unless the dog is a hound whelp under one year of age, which has never been entered in or used with any pack of hounds properly licensed (*k*).

Dogs kept, used and certified solely for the purpose of tending sheep or cattle on a farm, or in the exercise of the calling of a shepherd, may also be exempted on a declaration being made by the owner on the prescribed form (*l*), the consent of a petty sessional court obtained under sect. 5 of the Dogs Act, 1906 (*m*), and a certificate of exemption granted by the Inland Revenue. The number of dogs so exempted is limited by sect. 22 of the Act of 1878 to two, but where the occupier of a sheep farm owns more than 400 sheep feeding on common or unenclosed land, a third dog may be exempted, and if in such a case the number of sheep amounts to 1,000, a fourth dog may be exempted, with an additional dog for every 500 sheep exceeding 1,000, up to a maximum of eight dogs exempted. **[122]**

Although sect. 22 (4) of the Act of 1878 imposes a forfeiture of £20 on a person who delivers a declaration wherein the particulars required are not truly stated, it has been held that it is for the prosecution to rebut the evidence in an untrue certificate of the Inland Revenue by showing that a dog is not a cattle or sheep dog (*n*).

In the recovery of a penalty, justices have no power to disregard the absence of a certificate, even if they think that it has been wrongly withheld (*o*). The exceptional use of a dog in catching rabbits does not invalidate the exemption from duty (*p*). Justices have no power to refuse assent to an application for the exemption of the full number of dogs allowed, because they believe that a less number would be adequate (*q*).

A dog kept and used solely by a blind person for his guidance is also exempt from duty (*r*).

The duty is at the annual rate of 7*s.* 6*d.* a dog (*s*), and is collected by county and county borough councils as one of the local taxation licences (*t*). A licence may be obtained at any post office, but as the proceeds are credited to the county or county borough in which the

(*h*) 1 Statutes 354, 355.

(*i*) *Ibid.*, 344.

(*j*) *Ibid.*, 348—350.

(*k*) Act of 1878, s. 20; 1 Statutes 349.

(*l*) *Ibid.*, s. 22; *ibid.* See also the Dogs Act Rules, 1906; S.R. & O., 1906, No. 896.

(*m*) 1 Statutes 353.

(*n*) *James v. Nicholas* (1886), 50 J. P. 292; 39 Digest 247, 298.

(*o*) *Phillips v. Evans*, [1896] 1 Q. B. 305; 39 Digest 246, 296.

(*p*) *Egan v. Floyd* (1910), 102 L. T. 745; 39 Digest 247, 300.

(*q*) *Johnson v. Wilson*, [1909] 2 K. B. 497; 39 Digest 247, 297.

(*r*) Act of 1878, s. 21; 1 Statutes 349.

(*s*) *Ibid.*, s. 17; *ibid.*, 348.

(*t*) Finance Act, 1908, s. 6; 16 Statutes 739; and S.R. & O., 1908, No. 844.

post office is situate, it is desirable that the applicant should apply at a post office in the county or county borough in which he resides. **[123]**

It has been held that before proceedings are taken by an officer of the council for the recovery of a penalty on a failure to take out a licence, he should obtain a special authority from his council (*u*). But sect. 277 of the L.G.A., 1933 (*a*), now enables a council to authorise an officer to institute proceedings on their behalf in a court of summary jurisdiction, either generally or in respect of any particular matter.

The penalty for keeping a dog without a licence, or keeping a greater number of dogs than that licensed is £5 for every such offence (*b*). Every person in whose custody, charge or possession, or in whose house or premises any dog is found or seen is to be deemed the keeper of the dog, unless the contrary is proved, and the owner or master of hounds is deemed to be their keeper (*ibid.*). Upon the hearing of an information for the recovery of the penalty, the proof of the age of the dog lies upon the defendant (*c*). **[124]**

**Stray Dogs.**—A police officer who has reason to believe that any dog found in a highway or place of public resort is a stray dog, is authorised by sect. 3 of the Dogs Act, 1906 (*d*), to seize and detain it until the owner has claimed it and paid all the expenses incurred by its detention. When a dog so seized has a collar bearing the address of any person or when the owner is known, the police must serve on such person or owner notice that the dog has been so seized and is liable to be sold or destroyed, if not claimed within seven clear days. After seven clear days from the date of the seizure, or if a notice has been served from the date of its service, the police may cause the dog to be sold or destroyed as painlessly as possible. No dog so seized can be given or sold for the purposes of vivisection (*e*).

The police must keep or cause to be kept one or more registers of all dogs seized in the police area, which have not been transferred to an establishment for the reception of stray dogs. The register must be open to inspection at a fee of 1s. and give a brief description of the dog, the date of seizure and the manner in which it is disposed of. The police must not dispose of any dog to an establishment for the reception of stray dogs unless a similar register is kept for that establishment (*f*). All expenses incurred or payments received by the police in connection with stray dogs are defrayed out of or paid into the police fund. The dogs must be properly fed and maintained (*g*).

The finder of a stray dog must return it to its owner or take it to the nearest police station. If the finder desires and undertakes to keep the dog for a period of not less than one month, he may do so on giving his name and address and receiving a certificate in the prescribed form. If he does not desire to keep it, the police are to treat it as though it were a stray dog seized by a police officer (*h*). **[125]**

(*u*) *Jones v. Wilson*, [1918] 2 K. B. 36; 39 Digest 237, 116.

(*a*) 26 Statutes 452.

(*b*) Dog Licences Act, 1867, s. 8; 1 Statutes 345.

(*c*) Act of 1878, s. 19; 1 Statutes 349.

(*d*) 1 Statutes 352.

(*e*) Dogs Act, 1906, s. 3 (1)–(5); 1 Statutes 352.

(*f*) *Ibid.*, s. 3 (6), (7).

(*g*) *Ibid.*, s. 3 (8), (9).

(*h*) *Ibid.*, s. 4, as amended by the Dogs (Amendment) Act, 1928, s. 2; 1 Statutes 353. For the prescribed form of certificate, see S.R. & O., 1928, No. 612.

**Fouling of Footways by Dogs.**—Sect. 249 of the L.G.A., 1933 (*i*), allows a county council and the council of a borough to make bye-laws, subject to confirmation by the Secretary of State, for the good rule and government of the county or borough, and for the prevention and suppression of nuisances therein. Bye-laws made by a county council cannot extend to a borough. Under the corresponding enactments which sect. 249 replaces, the Home Secretary has confirmed a bye-law made by various borough councils, which forbids a person in charge of a dog in any street or public place, and having the dog on a lead, to allow or permit the dog to deposit its excrement upon the footway. For a contravention of this bye-law a fine is recoverable.

[126]

**Dogs used for Draught.**—It is an offence to cause or permit any dog to draw or help to draw any cart, carriage, truck or barrow on any public highway (*k*). [127]

**Dangerous Dogs.**—A court of summary jurisdiction may take cognisance of any complaint that a dog is dangerous and not kept under proper control, and may order the owner to keep the dog under proper control or order that the dog be destroyed (*l*). By sect. 1 (4) of the Dogs Act, 1906 (*m*), as amended by sect. 1 of the Dogs (Amendment) Act, 1928 (*n*), a dog may be dealt with under sect. 2 of the Act of 1871 as a dangerous dog, where it is proved to have injured cattle or poultry or chased sheep. It has been decided that proof of a dog's vicious tendency to other animals does not show that this tendency extends to human beings (*o*). [128]

**Mad Dogs.**—Under sect. 3 of the Dogs Act, 1871 (*p*), and the schedule to that Act the council of a borough, or as respects the City of London and the metropolitan police district, the commissioners of police, or outside any of the above areas the justices in petty sessions (*q*), may, if a mad dog or dog suspected of being mad is found within their jurisdiction, make and vary or revoke an order placing such restrictions as they think expedient on all dogs not under the control of any person, during such period throughout the whole or part of their jurisdiction as may be prescribed by the order. This power has in practice been superseded by the powers of the M. of A. & F. referred to in the next paragraph. [129]

**Orders of the Minister of Agriculture.**—The following purposes are among those for which the Minister may make orders under sect. 22 of the Diseases of Animals Act, 1894 (*r*), and sect. 2 of the Dogs Act, 1906 (*s*) :

(*i*) 26 Statutes 439.

(*k*) Protection of Animals Act, 1911, s. 9 ; 1 Statutes 378. The penalty for the first offence is £2, and for a second or subsequent offence £5. See also Metropolitan Police Act, 1839, s. 56 ; 19 Statutes 122.

(*l*) Dogs Act, 1871, s. 2 ; 1 Statutes 346. See also Metropolitan Streets Act, 1867, s. 18 ; 19 Statutes 160.

(*m*) 1 Statutes 351.

(*n*) *Ibid.*, 355.

(*o*) *Glanville v. Sutton & Co.*, [1928] 1 K. B. 571 ; Digest (Supp.).

(*p*) 1 Statutes 347.

(*q*) The Schedule of the Act of 1871 also allowed improvement commissioners under a local Improvement Act to make orders under s. 3, but these bodies were converted into urban district councils by s. 21 of the L.G.A., 1894 ; 10 Statutes 792. See also Metropolitan Police Act, 1839, ss. 54, 61 ; 19 Statutes 119, 124 ; Town Police Clauses Act, 1847, s. 28 ; 19 Statutes 38.

(*r*) 1 Statutes 400.

(*s*) *Ibid.*, 351.

(1) prescribing and regulating the muzzling of dogs and keeping them under control, (2) the seizure, detention and disposal (including slaughter) of stray dogs and of dogs not muzzled and of dogs not kept under proper control and the recovery from the owner of expenses, (3) prescribing the wearing by dogs of a collar bearing the owner's name and address whilst in a highway or place of public resort, and (4) with a view to the prevention of worrying cattle, preventing dogs or any class of dogs from straying during all or any of the hours between sunset and sunrise.

The orders in force as to dogs under these provisions consist of the Control of Dogs Order, 1930 (*t*), and amending orders of 1930 and 1931 (*u*). By sect. 21 of the order first-mentioned, local authorities may make regulations for the control of dogs between sunset and sunrise and requiring that a collar shall be worn by a dog in a highway or place of public resort bearing the name and address of the owner. But packs of hounds, dogs used for sporting purposes, for capture and destruction of vermin or the driving and tending of cattle and sheep are to be exempted from this requirement. [130]

**Rabies.**—By the Rabies Order, 1919 (*a*), every person having or having had in his possession or under his charge an animal afflicted with or suspected of rabies must (1) forthwith isolate it until the local authority (*b*) slaughter it or inform him that they are satisfied that it is not affected with rabies, and (2) with all practicable speed inform a constable. The constable must immediately telegraph to the secretary of the M. of A. & F., Whitehall Place, S.W.1., and also give information to the local authority. It is then the duty of the local authority to cause every dog which is diseased or suspected to be diseased to be slaughtered. The owner must give all reasonable facilities for that purpose. [131]

**Importation of Dogs.**—Under the Importation of Dogs and Cats Order, 1928 (*c*), a dog may not be imported except under licence from the M. of A. & F. The conditions of the licence may impose restrictions upon the movements of the dog when landed. In any event all dogs, except *bona fide* performing dogs and dogs to be exported within forty-eight hours, must be detained and isolated at the owner's expense at the premises of an approved veterinary surgeon for a period of six months after landing. [132]

**London.**—As respects the fouling of footways by dogs, a power to make bye-laws for good rule and government and the suppression of nuisances is conferred on the L.C.C. and the council of each metropolitan borough by sect. 38 of the L.C.C. (General Powers) Act, 1934 (*d*), but bye-laws made by a borough council must not be inconsistent with bye-laws made by the L.C.C. and in force in any part of the borough. A power to make similar bye-laws was also given to the common council of the city (*e*).

It will have been seen that the Commissioners of the city and

(*t*) S.R. & O., 1930, No. 399.

(*u*) *Ibid.*, No. 683; 1931, No. 80.

(*a*) S.R. & O., 1919, No. 464. See also the Rabies (Amendment) Order, 1919; S.R. & O., 1919, No. 1063; and the title DISEASES OF ANIMALS.

(*b*) The local authorities for this purpose are those for the purposes of the Diseases of Animals Acts, as to which see Vol. 4, p. 395.

(*c*) S.R. & O., 1928, No. 922. See title DISEASES OF ANIMALS, Vol. 4 at p. 408.

(*d*) 27 Statutes 422.

(*e*) 26 Statutes 594.

metropolitan police have power to make orders under sect. 3 of the Dogs Act, 1871 (*f*), where an outbreak of rabies is threatened. The local authorities in London for the purposes of the Control of Dogs Order, 1930 (*g*), and the Rabies Order, 1919 (*h*), are the L.C.C. and in the city the Common Council (*i*).

There are a number of miscellaneous additional provisions with regard to dogs under older Acts in force in London.

Within the metropolitan police district it is an offence under the Metropolitan Police Act, 1839, in any thoroughfare or public place, to suffer to be at large any unmuzzled ferocious dog or to set on any dog to attack any person or animal, and any person committing this offence may be taken into custody by a constable without a warrant (*k*). Under the Metropolitan Streets Act, 1867 (*l*), the Commissioners of the City and Metropolitan Police may issue a notice requiring any dog, while in the streets and not led by some person, to be muzzled, and any such dog found loose and unmuzzled in the street during the currency of the notice may be detained, and if not claimed within three days may be sold or destroyed, but if it has a collar bearing an address, the police must communicate with that address. Where a dog is rabid or has been bitten by a rabid dog, a magistrate may direct that it be destroyed (*m*). Where in the metropolitan police district, a dog is reasonably suspected of being in a rabid state or of having been bitten by any animal in a rabid state, the police have power to destroy it (*n*). The owner of such a dog who permits it to go at large, after having information or reasonable ground for believing that it is in such state, is liable to a penalty not exceeding £5 (*o*).

The L.C.C. and metropolitan borough councils have power to make bye-laws with respect to the fouling of public footways by dogs (*p*). 133

(*f*) 1 Statutes 347. See also *ante*, p. 73.

(*g*) S.R. & O., 1930, No. 399. See *ante*, pp. 73, 74.

(*h*) See note (*a*), *ante*, p. 74.

(*i*) Diseases of Animals Act, 1894, s. 3; 1 Statutes 392.

(*k*) Metropolitan Police Act, 1839, s. 54; 19 Statutes 119. For similar provisions as to the City, see City of London Police Act, 1839, s. 35; 2 & 3 Vict. c. xciv.

(*l*) S. 18; *ibid.*, 160.

(*m*) *Ibid.*

(*n*) Metropolitan Police Act, 1839, s. 61; 19 Statutes 124. For similar provisions as to the City, see City of London Police Act, 1839, s. 42; 2 & 3 Vict. c. xciv.

(*o*) *Ibid.*

(*p*) Under Municipal Corporns. Act, 1882, s. 23; 10 Statutes 584; applied by L.G.A., 1888, s. 16; 10 Statutes 698; and London Government Act, 1899, s. 5 (2), Sched. II., Pt. II.; 11 Statutes 1228, 1243.

## DRAFT SPECIAL LIST

*See VALUATION LIST.*

# DRAINAGE BOARDS

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*See also titles :*

CATCHMENT BOARDS ;  
CONSERVANCY AUTHORITIES ;  
DRAINAGE RATES ;

LAND DRAINAGE ;  
LEE CONSERVATORS ;  
THAMES CONSERVATORS.

[NOTE.—As nearly all the references to statutes are to the Land Drainage Act, 1930 (generally referred to in this article as the Act), it has been thought unnecessary to do more than insert one reference to Halsbury's Statutes of England, namely that in note (a) below.]

## CONSTITUTION AND ELECTION

**Constitution.**—Two kinds of drainage boards are contemplated by the Land Drainage Act, 1930 (*a*), viz. (1) the internal drainage board who act for a portion of a catchment area (*b*) under a catchment board and are subject to the supervision of that board, and (2) a drainage board constituted by order under sect. 17 of the Act for an area not comprised in a catchment area (*bb*). Commissioners of sewers and drainage boards existing at the passing of the Act were to be reorganised, and either abolished or converted into drainage boards acting under the Act by a scheme prepared by the catchment board and confirmed by the Minister of Agriculture and Fisheries (in this title referred to as "the Minister") under sect. 4 of the Act.

(a) 23 Statutes 529 *et seq.*

(b) Catchment areas are the areas drained by the main rivers mentioned in the First Schedule to the Act of 1930, or any area added to the schedule by order under s. 2 (2) of the Act. Catchment areas may also be regrouped by such an order.

(bb) As to the position of a Catchment Board as a drainage board, see Vol. 2, title CATCHMENT BOARDS.

A drainage board is a body corporate with power to hold land without licence in mortmain (*c.*) [134]

**Election.**—Under sect. 33 and Part I. of the Third Schedule to the Act, an internal drainage board consists of members elected by owners or occupiers of land on which a drainage rate (*d*) has been levied in the year immediately preceding. The election is conducted in accordance with rules made by the Minister (*e*). Each elector is entitled to votes according to a scale based on the rateable value of his property (*f*), allowing one vote for every £50 of rateable value up to £250, six votes if between £250—£500, eight votes if between £500—£1,000, and ten votes if exceeding £1,000. [135]

**Qualification of Members.**—A person to be qualified for election must be either (1) the owner of ten acres of land in respect of which a drainage rate may be levied by the board and situate in the electoral district for which he stands, or (2) the occupier of twenty acres of such land as aforesaid, or (3) the owner or occupier of land of the annual value of £30 situate in the electoral district for which he stands, or (4) a person nominated by an owner specified in (1) or (3) whether such owner is an individual or a body of persons (*g*). But none of the above qualifications avails if the drainage rate on the land, payable by the occupier or the owner (as the case may be), has remained unpaid for more than a month from the date of demand (*ibid.*). [136]

**Term of Office.**—Members of a drainage board come into office on the first day of November next after the date of their election and hold office for three years (*h*). A vacating member, if not otherwise disqualified, is eligible for re-election (*i*). [137]

**Vacation of and Disqualification for Office.**—A member may resign his office by signed notice in writing to the chairman (*k*). He vacates office if he (1) becomes bankrupt, or makes a composition or arrangement with his creditors (*l*), or (2) is absent from meetings for more than six months consecutively, unless due to illness or some other reason approved by the board (*m*).

An undischarged bankrupt or a person having made a composition or arrangement with his creditors during the preceding five years is ineligible for election or being a member of the board (*n*). [138]

**Casual Vacancies.**—A casual vacancy is filled by an election by the drainage board, not by the electors (*o*). The person elected holds office for the remainder of the vacating member's term of office (*p*). But if this period is less than six months the vacancy need not be filled (*q*). [139]

(*c*) S. 1 (2).

(*d*) See title DRAINAGE RATES.

(*e*) S. 33 (2). As to the register of electors and conduct of elections, see Land Drainage (Election of Drainage Boards) Regulations, 1932; S.R. & O., 1932, No. 1021.

(*f*) See Sched. III., Part I., para. 2. Electors cannot vote if their drainage rate is unpaid for more than a month (*ibid.*, para. 1 (i.) (ii.)).

(*g*) Sched. III., Part II., para. 1.

(*h*) *Ibid.*, para. 3.

(*i*) *Ibid.*, para. 7.

(*k*) *Ibid.*, para. 3, proviso (a).

(*l*) *Ibid.*, proviso (b).

(*m*) *Ibid.*, proviso (c).

(*n*) *Ibid.*, para. 6.

(*o*) *Ibid.*, para. 4.

(*p*) *Ibid.*, para. 5.

(*q*) *Ibid.*, para. 4.

### MEETINGS, CHAIRMAN AND OFFICERS

**Standing Orders.**—A drainage board may, with the approval of the Minister, make rules (1) for regulating their proceedings, including notices of meetings and place of meeting and quorum ; (2) as to the appointment of a chairman and vice-chairman ; (3) for the constitution of committees by the board ; (4) authorising the delegation to committees of any powers of the board and for regulating the proceedings, etc., of committees (r). [140]

**Payment of Chairman and Expenses of Members.**—The Minister may, by order, authorise a drainage board to pay a salary to the chairman, and repay the travelling expenses of members in attending meetings (s). [141]

**Appointment of Officers.**—A drainage board may appoint officers at such reasonable remuneration as they think fit (t). [142]

**Disclosure of Interest.**—Any member of a drainage board, who is interested in any company with which the board has or proposes to make any contract, is required to disclose to the board the fact and nature of his interest, and to abstain from taking part in any deliberation or decision of the board relating to such contract (u). A note of the disclosure must be forthwith recorded on the minutes. [143]

### FUNCTIONS OF DRAINAGE BOARDS

**Generally.**—If the drainage board are an internal drainage board they will, under sect. 7 (1) of the Act exercise their functions subject to the general supervision of the catchment board. If on the other hand there is no catchment board, the functions of the drainage board will in part depend on the order under sect. 17 of the Act by which they were constituted.

As a catchment board as well as a drainage board are a drainage board within the meaning of the Act (a), a particular section often does not indicate on the face of it whether the functions dealt with in it are to be exercised by the catchment board, or by the internal drainage boards within the catchment board's area. In part, this question is decided by sect. 6 (1) of the Act which enacts that the powers conferred by the Act on drainage boards shall, so far as concerns the main river, its banks and drainage works in connection with it, be exercisable solely by the catchment board. By sect. 7 (2) of the Act, the consent of the catchment board must be obtained to the construction by an internal drainage board of drainage works affecting any other internal drainage board or the alteration of any existing drainage works which would affect another internal drainage board. Further, an internal drainage board must not construct or alter any structure, appliance or channel for the discharge of water into the main river except on such terms as may be agreed upon between the catchment board and the drainage board, or in default determined by the Minister (b).

Under sect. 34 (1) of the Act every drainage board (including a catchment board) have power within their district to maintain any existing watercourse or drainage work in a due state of efficiency ;

(r) Sched. III., Part II., para. 9.

(s) *Ibid.*, para. 12.

(t) S. 48.

(a) See s. 1 of the Act.

(s) *Ibid.*, para. 12.

(u) Sched. III., Part II., para. 13.

(b) S. 7 (2).

to improve existing works by the deepening, etc., of watercourses, the removal of obstructions or otherwise ; and to construct new works. But a catchment board must not under the sub-section do any work otherwise than in relation to the main river (c). The sub-section does not authorise an entry on land, except for the purpose of maintaining existing works (d). Subject to this reservation, a general power of entry is given by sect. 43 of the Act to any person authorised by a drainage board. [144]

**Works outside District.**—Upon an order being obtained from the Minister, a drainage board may under sect. 34 (2) of the Act execute drainage works on land outside their district (e) : also (1) with the consent of the board of an adjoining district execute and maintain works in such district, and (2) contribute to the expense of the execution or maintenance of works by an adjoining board (f).

Any person injured by the operations of the board is entitled to compensation, and the amount is determined, in case of dispute, under the Lands Clauses Acts (g). [145]

**Maintenance of Watercourses.**—Where a drainage board, not being a catchment board, are of opinion that by reason of the act or default of any person, the proper flow of water in any watercourse (h) is impeded, and by reason of the condition of the watercourse, agricultural land belonging to or in the occupation of some other person is or is in danger of being injured by water, the board may serve a notice under sect. 35 (2) of the Act on the person by whose act or default the flow of water is impeded. The notice requires the watercourse to be put in proper order within two months and may specify the works necessary to be done (sect. 35 (3)).

The person so served may, within twenty-one days, either (1) complain to a court of summary jurisdiction, or (2) by notice to the clerk of the board, have the question referred to the arbitration of a single arbitrator, appointed, in default of agreement, by the President of the Surveyors' Institution (i).

The grounds of objection, which may be placed before the justices, are : (1) that the control of the watercourse, or the part in question, is vested in some other person, or that the service of the notice on the complainant is otherwise not authorised by sect. 35 ; (2) that the condition of the watercourse is not due to his act or default ; or (3) that the notice cannot reasonably be enforced against him having regard to (i.) the nature and extent of his land or of his estate or interest therein and the extent to which the land abuts on the watercourse, and (ii.) the expenses involved in complying with the notice ; or (4) that the specified work is unnecessary or unreasonable (k).

(c) See the proviso to s. 81, definition in that section of "main river."

(d) See s. 34 (4).

(e) As to procedure for obtaining such orders, see s. 59.

(f) S. 39.

(g) S. 34 (3). As to these Acts, see COMPENSATION ON ACQUISITION OF LAND. A drainage board is a public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act, 1919 ; 2 Statutes 1176 ; see s. 45 (5) of the Act of 1930.

(h) See definition, s. 81. The main river is excluded (s. 35 (14)). So is a watercourse under the jurisdiction of a board of conservators, conservancy authority or navigation authority without their consent (s. 35 (12)). Also, where a local authority have power to secure a proper flow, the board cannot exercise their powers except by consent of or on default by the local authority after notice (s. 35 (11)).

(i) S. 35 (4).

(k) S. 35 (5).

If he alleges that the condition of the watercourse is attributable to subsidence due to mining operations (including brine pumping) he may have the question determined by a single arbitrator appointed, in default of agreement, by the President of the Institution of Civil Engineers (*l*). Apparently, if this question is decided in the affirmative, it is contemplated that he will be exempted by sub-sect. (1) of the section from complying with the notice.

The court or arbitrator may confirm, annul or vary the notice (*m*). Either party has a right of appeal to quarter sessions against a decision of a court of summary jurisdiction (*n*).

If the notice is not complied with within two months after service (or of its confirmation or variation by the court or arbitrator), the drainage board may execute the necessary works and recover the expenses summarily as a civil debt (*o*). If several persons are in default the board may apportion the expenses between them (*p*). [146]

**Obstructions in Watercourses.**—The consent in writing of the drainage board is required before any person can erect, raise or alter any mill dam, weir or like obstruction to the flow of any watercourse (*q*). If their consent is unreasonably withheld, the applicant has a right to arbitration by a single arbitrator, appointed in default of agreement by the President of the Institution of Civil Engineers (*r*), but if the drainage board do not notify their decision on the application within two months they are deemed to have consented to it.

Any obstruction erected, raised or altered without a consent is deemed a nuisance, and, in default of its abatement after notice, the drainage board may cause the defaulter to be summoned before a court of summary jurisdiction who may make an abatement order and impose a fine of £100. If the order is not complied with the drainage board may carry out the work and the expenses are recoverable summarily as a civil debt (*s*). The defaulter is also liable to a daily fine of £5. Either the drainage board or the party summoned may appeal to quarter sessions against the decision of the justices (sect. 44 (6)).

The board have similar powers with respect to an obstruction erected before the Act which they deem a nuisance, but in this case if the obstruction is otherwise lawful, compensation must be paid to any person injured by its removal (*t*). [147]

**Obligation to Repair.**—A drainage board may enforce an obligation to do any repair or maintenance work imposed in relation to a watercourse, bridge or drainage work on any person by reason of tenure, custom, prescription or otherwise (*u*). In default of compliance

(*l*) S. 35 (6). As to brine pumping, see subsect. (1).

(*m*) S. 35 (7).

(*n*) S. 35 (8).

(*o*) S. 35 (9). For summary recovery of civil debts, see title SUMMARY PROCEEDINGS.

(*p*) S. 35 (9). The court may vary the apportionment (*ibid.*). The section does not affect the right of an owner or occupier under any lease or contract to recover any such expenses from the other (s. 35 (10)).

(*q*) S. 44 (1). The section does not apply to works of a navigation, harbour or conservancy authority or statutory works, see sub-s. (8).

(*r*) S. 44 (2).

(*s*) S. 44 (3)—(5). For summary recovery of civil debts, see title SUMMARY PROCEEDINGS.

(*t*) S. 44 (7). In case of dispute the compensation is determined under the Lands Clauses Acts (*ibid.*).

(*u*) S. 36. But not works in connection with the main river, s. 6 (1).

within seven days with a notice served by an officer, the board may execute the work and recover the expenses summarily as a civil debt (a).

Under sect. 37 of the Act, a drainage board may, with the consent of the Minister, commute any such obligations not being obligations to do work in a catchment area in connection with the main river, or obligations to which sect. 35 of the Act applies (b). The provisions of sect. 9 of the Act relating to commutation of obligations by a catchment board are applied, with the necessary modifications, to commutations under sect. 37 of the Act (c). [148]

**Disposal of Spoil.**—A drainage board may, without compensation, appropriate and dispose of shingle, sand, clay, gravel, etc., removed in widening, deepening or dredging a watercourse, or use it for the maintenance and improvement of, or deposit it on the banks of, the watercourse without, however, creating a nuisance (d). They may also arrange with a sanitary authority for the disposal of such spoil at a price to be agreed (e). [149]

**Transfer of Powers of Navigation Authorities.**—With a view to improving drainage, a drainage board, with the approval of the Minister and the Minister of Transport, may arrange with a navigation or conservancy authority (f) for (1) the transfer to the board of the whole or a part of the authority's undertaking or any of their powers, duties, liabilities and property; (2) the alteration or improvement of their works; and (3) payments to or by the authority in respect thereof (g). Notice of any such proposal must be given to the Postmaster-General and advertised in one or more local newspapers at least one calendar month before the arrangement is made, and when an arrangement has been completed, a notice containing the prescribed particulars must be published in the *London Gazette* (h).

Arrangements so made have statutory effect, but may be varied or revoked by subsequent arrangements (i). [150]

**Variation of Navigation Rights.**—Where a navigation authority are not exercising their powers or not exercising them to the necessary extent, in respect to any canal, river or navigable waters, the drainage boards of the districts may apply to the Minister for an order revoking, varying or amending any local Act relating to navigation rights or the powers and duties of the navigation authority (k). The consent of the Minister of Transport, and if the order affects tidal waters, of the Board of Trade, must be obtained (l). If opposed, the order is provisional only and requires confirmation by a Bill in Parliament (m), and the provisions in Part II. of the Second Schedule to the Act must be followed.

Apparently any such application with regard to a main river must be made under sect. 6 of the Act by a catchment board. [151]

(a) S. 36 (2), (3). For summary recovery of civil debts, see title **SUMMARY PROCEEDINGS**.

(b) Ss. 37 (1), 35 (13).

(c) S. 37 (2). See s. 9 and title **CATCHMENT BOARDS**.

(d) S. 38 (1).

(e) S. 38 (2).

(f) See definitions in s. 81. See also title **CONSERVANCY AUTHORITIES**.

(g) S. 40 (1).

(h) S. 40 (3), (4); Land Drainage (General) Regulations, 1932, Art. 2 (S.R. & O., 1932, No. 64).

(i) S. 40 (2).

(l) S. 41 (1), (7).

(k) S. 41 (1), (4), (6).

(m) S. 41, (2).

**Levy of Navigation Tolls.**—Where any navigable waters in a drainage district are not under the control of a navigation, harbour or conservancy authority (*n*) the drainage board may apply to the Minister of Transport for an order to levy navigation tolls (*o*). An order cannot be made unless it is shown that the cost of maintenance or works has been or will be increased by navigation (*p*). If opposed, the order is provisional only until confirmed by a Bill in Parliament (*q*).

In this instance also any such application with regard to a main river must be made by the catchment board.

The tolls may be demanded from the person in charge of the navigating vessel and, if not paid on demand, may be recovered summarily as a civil debt from such person or the owner of the vessel (*r*). [152]

**Purchase and Disposal of Land.**—A drainage board may, with the approval of the Minister, acquire by agreement land for any of their purposes, and also purchase by agreement any obstructive water-mill, dam, weir or other work or any easement which interferes with the proper drainage of their district (*s*). They are also empowered (with the same approval) to sell or exchange land not required (*t*).

For the purpose of the acquisition of land by agreement, sects. 175—178 of the P.H.A., 1875 (*u*), are to apply as if they were re-enacted in the Act of 1930 and in terms made applicable to drainage boards (*a*). These sections being thus re-enacted, it follows that the repeal of sect. 175 in part and the whole of sects. 176—178 made by the L.G.A., 1933, does not affect their inclusion in the Act of 1930, and that full effect should still be given to the provision in sect. 45 (1) of that Act (*b*).

A drainage board who wish to purchase land compulsorily may be authorised to do so by an order made by them and confirmed by the Minister in accordance with the provisions of the Fourth Schedule to the Act (*c*). But land belonging to the Crown, the Duchies of Lancaster and Cornwall, a Government department, or a local authority or any authority or company for a public utility undertaking cannot be acquired compulsorily (*d*). [153]

**Bye-laws.**—By sect. 47 of the Act a drainage board may make bye-laws for securing the efficient working of the drainage system in their district, and in particular for : (1) regulating the use, preventing the improper use, and preserving their watercourses, banks or works ; (2) regulating the opening of sluices and floodgates ; (3) preventing the obstruction of watercourses by liquid or solid matter ; (4) compelling the cutting and removal of vegetable growths (*e*).

(*n*) See definitions in s. 81.

(*o*) S. 42 (1).

(*p*) S. 42 (2) (i.).

(*q*) S. 42 (2) (ii.) The procedure in Part II. of the Second Schedule also applies to these orders.

(*r*) S. 42 (5). For summary recovery of civil debts, see title SUMMARY PROCEEDINGS.

(*s*) S. 45 (1).

(*t*) S. 45 (4).

(*u*) 18 Statutes 699—702.

(*a*) S. 45 (1).

(*b*) See the cases referred to in note (*d*), on p. 74 of Vol. I.

(*c*) S. 45 (2) and Sched. IV. For procedure, see also Land Drainage (Compulsory Purchase of Land) Regulations, 1931 (S.R. & O., 1931, No. 3).

(*d*) S. 45 (3).

(*e*) S. 47 (1). Bye-laws are not valid until confirmed by the Minister (*ibid.* (2)). They must not conflict or interfere with bye-laws made by a navigation, harbour or conservancy authority (*ibid.* (9)).

At least one month's notice of the application to apply for the Minister's confirmation must be advertised (*f*). A printed copy of the bye-laws must be kept at the board's office during this period, and open to inspection during office hours, free of charge, by persons interested. A printed copy must also be supplied to any such person on demand free of charge (*g*).

The Minister, with or without a public inquiry, may disallow any bye-law, or allow the same either without modification or (subject to the consent of the drainage board) with such modifications as he thinks fit (*h*).

The Minister has also power to revoke a bye-law in force. He must first give notice to the drainage board and consider any objections they raise and, if they so require, hold a public local inquiry (*i*).

*Prima facie* evidence of the bye-laws may be given in any legal proceedings by the production of a copy purporting to be certified as a true copy by the clerk of the board (*k*).

A breach of bye-laws is punishable on summary conviction by a fine not exceeding £20 and a daily fine not exceeding £5 (*l*). 154

**Transfer of Functions to Catchment Board.**—A catchment board may petition the Minister under sect. 11 of the Act for an order transferring to them the functions, liabilities and property of an internal drainage board, but if the order is opposed, it becomes a provisional order and must be confirmed by a Bill in Parliament.

Where an internal drainage board are not so exercising their powers as to prevent injury to land in a catchment area by flooding or inadequate drainage, the catchment board may under sect. 10 exercise those powers, after giving the drainage board not less than 30 days' written notice. If the drainage board object, the consent of the Minister must be obtained. 155

**Local Acts.**—The powers conferred by Part V. of the Act are deemed to be in addition to and not in substitution for any like powers conferred by a local Act (*m*). Where the boundaries of a drainage district are altered under the Act the powers conferred by local Acts are exercisable in the added area, unless otherwise provided in the scheme or order (*n*).

All protective provisions of local Acts are preserved and drainage boards can only exercise their powers subject to them (*o*). 156

#### FINANCE

**Accounts.**—The accounts of a drainage board, other than a catchment board, are to be made up in such manner and to such date, and are to be audited by such persons and in such manner as the Minister may from time to time direct (*p*). But the Minister may under the proviso to sect. 49 (4) direct these accounts, or the accounts of any

(*f*) S. 47 (2). If made by an internal drainage board notice must also be given to the council of every county, county borough or county district any part of whose area is in the drainage district.

(*g*) S. 47 (3).

(*h*) S. 47 (4).

(*i*) S. 47 (5). The expenses of the Minister are payable by the board (*ibid* (6)).

(*k*) S. 47 (7). (*l*) S. 47 (8). (*m*) S. 82 (1).

(*n*) S. 82 (2). Boundaries are subject to alteration under a scheme or order, see ss. 4 (1) (b) (i), 17 (2) (a).

(*o*) S. 66.

(*p*) S. 49 (4). See also Art. 3 of the Land Drainage (General) Regulations, 1932; S.R. & O., 1932, No. 64.

particular drainage board, to be audited by the district auditors. No general direction of this kind has yet (March, 1935) been given.

A drainage board is required to send annually, in the prescribed form (1)a report of their proceedings ; and (2) a copy of their audited accounts of receipts and expenditure, to the Minister, the council of any county or county borough in which any part of their district is situate, and, in the case of an internal drainage board, to the catchment board (q).

A copy of the accounts must also be kept at the office of the drainage board ; and any person liable to pay drainage rates in their district is entitled, without payment, to inspect and take copies or extracts therefrom (q). [157]

**Expenses.**—The expenses of a drainage board are raised (in so far as they are not met by contributions from a catchment board and other sources) by the levy of drainage rates (r). [158]

**Borrowing Powers.**—A drainage board may, with the sanction of the Minister, borrow and re-borrow money on the security of their property, rates and revenues, for the purpose of defraying costs, charges and expenses incurred by them in the execution of their duties (s).

The maximum loan period is fifty years (t). The Public Works Loan Commissioners may lend money to a drainage board for any purpose for which a loan has been sanctioned (u).

These provisions are not affected by Part IX. of the L.G.A., 1933 (a), as that Part relates only to borrowing by local authorities. [159]

#### LONDON

The Land Drainage Act, 1930, by sect. 78 provides that :

This Act shall not apply to the administrative County of London except to such portion thereof as is for the time being included in the Lee catchment area and nothing in this Act, or any order made thereunder shall affect any property of, or prejudice the exercise of any statutory power, authority or jurisdiction for the time being vested in or exercisable by, the L.C.C.

The Act came into operation on August 1, 1930, except so far as certain of the powers conferred on the drainage board of the Thames catchment area are concerned. These powers by sect. 79 (9) were not to become exercisable until two years later.

The drainage board of the Thames catchment area consists of the Conservators of the River Thames as reconstituted by sect. 79 of the Act and the Sixth Schedule (b). See title THAMES CONSERVATORS.

By sect. 80 of the Act the drainage board of the Lee catchment area is a new body called the Lee Conservancy Catchment Board. See Vol. 2, p. 460 and title LEE CONSERVATORS. [160]

(g) S. 49 (1), (5).

(r) S. 24. See title DRAINAGE RATES.

(s) S. 46 (1).

(t) S. 46 (2).

(u) S. 46 (5).

(a) 26 Statutes 412 *et seq.*

(b) S. 79 (2), (3) and Sched. VI. have been repealed by the Thames Conservancy Act, 1932 (22 & 23 Geo. 5, c. xxxvii.) and included in that Act.

## DRAINAGE RATES

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*See also titles :* CATCHMENT BOARDS ;  
 DRAINAGE BOARDS ;  
 LAND DRAINAGE ;  
 LEE CONSERVATORS ;  
 THAMES CONSERVATORS.

**Introductory.**—The provisions relating to drainage rates are now contained in sects. 24 to 31 of the Land Drainage Act, 1930 (*a*).

Drainage rates were governed by a succession of public general Acts from the Bill of Sewers (*b*) down to the Land Drainage Act, 1929 (*c*), and also by a large number of local Acts which conferred special powers on drainage boards for particular drainage districts. In many instances these local Acts gave powers which differed considerably from those contained in the general legislation. The Land Drainage Act, 1930, is stated in its title to be an Act to amend and consolidate the law relating to the drainage of land, and the whole of the general legislation was repealed by it and largely re-enacted. But local Acts were not directly repealed, and by sect. 83 (1) (*b*) of the Act of 1930, orders made under the repealed general legislation have effect as though made under that Act. It is important therefore to note that the rating provisions contained in the local Acts and in any orders made under the repealed legislation remain in force except in so far as a repeal by implication has been made. [161]

Inasmuch as the whole of the general enactments have been repealed, it is unnecessary to review them. The provisions of local Acts and orders made under the general legislation being only of local application and varying as between one board and another, reference must be made to any local Acts or orders in force in a particular drainage district.

Before the passage of the Land Drainage Act, 1930, a drainage rate could be levied on a rough estimate of the benefit derived from drainage

(*a*) 23 Statutes 546—552. It has been thought unnecessary to include in the notes following a reference to the page on which a particular section of this Act will be found.

(*b*) 23 Hen. 8, c. 5 ; 17 Statutes 985.

(*c*) 17 Statutes 1096.

or defence works on a basis of a specified sum per acre of land, regardless of its actual value (*d*). But this system was abolished by the Act of 1930, sect. 24 (4) of which provides that every rate made by a drainage board shall be assessed on the basis of annual value as regards all hereditaments. For the meaning of "annual value" see *infra*.

In a recent case, *Lodge v. Lancashire County Council* (*e*), it was held that the Land Drainage Act, 1930, did not confer a new power of rating in the case of an existing drainage board, but provided that rates should be assessed on annual value only instead of on annual value or acreage as had hitherto been the case, and that where an acreage rate had been commuted for a capital sum under an order made under the repealed legislation, the Act of 1930 did not make the land liable again to rates on the basis of its annual value. [162]

Drainage rates are not leviable by catchment boards but by drainage boards (*f*), although a drainage rate may include a sum which has been required by a precept of the catchment board to be paid by the internal drainage board as a contribution to the expenses of the catchment board (*g*). The expenses of the internal drainage board in the exercise of their functions are also met by the levy of drainage rates in so far as they are not provided by contributions from the catchment board and other sources. [163]

**Kinds of Rates.**—Drainage rates may be either (i.) an owner's rate, or (ii.) an occupier's rate. The former is raised to defray the expenses of new works or the improvement of existing works and the drainage board's contributions to a catchment board; the latter to defray any other expenses or charges (*h*).

It would appear that these will be separate rates and that in addition there may be separate rates levied on a part of the drainage district which themselves may be either owner's or occupier's rates; see "Incidence of Rates," *post*, p. 90. [164]

**Basis of Assessment.**—Both the owner's rate and the occupier's rate are levied on the occupiers of hereditaments in the drainage district (*i*). The owner is deemed the occupier while the hereditament is unoccupied. An occupier who pays the owner's rate can recover the amount from the owner under sect. 26 (4) (c) of the Act of 1930. All drainage rates are assessed on the annual value of hereditaments, *i.e.* the gross annual value of land for income tax under Schedule A of the Income Tax Acts (*k*). In the case of agricultural land (*l*) the assessment is based on the annual value; but in the case of any other land on one-third only of the annual value (*m*).

(*d*) See e.g. s. 4 of the Land Drainage Act, 1918; 17 Statutes 1082; repealed by the Act of 1930.

(*e*) (1934), 98 J. P. 419; Digest (Supp.).

(*f*) S. 24 (1). For the distinction between a catchment board and a drainage board, see titles CATCHMENT BOARDS, DRAINAGE BOARDS and *ante*, p. 78.

(*g*) Ss. 21 (1), 22 and 24 (1).

(*h*) S. 24 (2). As to expenses and liabilities incurred before August, 1930, see *ibid.*, proviso.

(*i*) Ss. 24 (3), 26 (4).

(*k*) Ss. 24 (4), 29 (1). The drainage board may require surveyors of taxes to furnish a copy of these gross annual values on payment of not exceeding 5s. for every 100 entries (s. 29 (4)).

(*l*) For definition of "agricultural land," see s. 29 (1). This is similar to the definition in s. 2 of the Rating and Valuation (Apportionment) Act, 1928 (14 Statutes 714) but excludes cottage gardens.

(*m*) S. 24 (4).

Land used as a railway constructed under an Act of Parliament for public conveyance is by sect. 24 (5) of the Act of 1930 deemed to be of the same character and annual value as the land adjoining. If the land on each side of the railway differs in character, the land used as a railway is treated as divided along the middle and each part is deemed to be of the same character and value as the land adjoining that part. However, in making this calculation, the annual value of the adjoining land is to be deemed to be reduced by such part of it as is ascribable to buildings. [165]

A drainage board may make any apportionments of the gross annual value under Schedule A in order to arrive at the annual value for drainage rates; and they may determine the annual value where the land is not assessed to income tax (*n*). Notice of any such apportionment or determination must be served on the owner and occupier concerned, both or either of whom may within twenty-eight days appeal against it to a court of summary jurisdiction. The decision of the court is final (*o*).

Apportionments of the gross Schedule A values generally have to be made in two cases: (1) where land is partly within the drainage district and partly outside it, and (2) where an assessment includes both agricultural land and other hereditaments—see the definition of “agricultural land” in sect. 29. It should be noted that it is the gross annual value for Schedule A which has to be apportioned, and that while the land within the drainage district can be valued as against the land without for the purpose of deciding the proportions in which the gross Schedule A value is to be divided, the mere adoption of a valuation of the land within the district as the annual value for drainage rates would not appear to be such an apportionment of the gross annual value as is required by sect. 29. [166]

**Rate in the Pound.**—Every drainage rate is to be assessed at a uniform amount per £ throughout the area (*p*), unless the drainage board, after consultation with any catchment board, make an order under sect. 24 (7) of the Act determining that no rates shall be levied in any portion of the district which, in their opinion, ought to be exempted by reason of its height above sea level or for any other reason. Another exception to the levy of uniform rates is allowed by sect. 24 (6) of the Act, which permits a drainage board to divide their district into sub-districts by order, and to levy differential rates in each sub-district, if they think it just to do so.

It will be seen that both these provisions allow a drainage board, within limits, to pay regard to the degree of benefit derived by particular land from the expenditure, to meet which a drainage rate is levied.

But any order of an internal drainage board under s. 24 (6) or s. 24 (7) can only be made after consultation with the catchment board, and must be submitted to the M. of A. & F. and has no effect until it is confirmed by him. When the order has been submitted, the drainage board must forthwith advertise the fact in one or more local newspapers, and the notice must state where a copy of the order may be inspected

(*n*) S. 29 (2).

(*o*) S. 29 (3). As to the service of notices, see s. 75 and art. 8 of the Land Drainage (General) Regulations, 1932; S.R. & O., 1932, No. 64.

(*p*) S. 24 (4).

and that representations may be made to the Minister within one month (q). [167]

**Agreement for payment of Drainage Rates from General Rates.**—Where part of a borough or urban district is situate within a drainage district, the council of the borough or urban district may agree with the drainage board under sect. 25 (1) of the Act of 1930 that a drainage rate shall not be levied on occupiers of hereditaments in that part of the borough or urban district which is within the drainage district, but that the council shall pay to the drainage board, within two months after the making of any drainage rate, a sum equal to the aggregate of the amounts which the board could have demanded and recovered from those occupiers.

Any sum so paid by the council will be obtained by the levy under sect. 25 (2) of the Act, in the part of the borough or urban district which is within the drainage district, of an additional item of the general rate. But as occupiers of agricultural land are now exempt from the general rate, an agreement under sect. 25 would have the result of transferring the liability for the drainage rate to the occupiers of buildings and other hereditaments. It seems unlikely, therefore, that the section will often be acted upon. [168]

**Making and Period of Rate.**—The drainage board must prepare and keep a rate book in the prescribed form (r). A drainage rate is made in writing under the common seal of the board and is deemed to be made on the date of the passing of the resolution authorising the common seal to be affixed (s). The rate may be made for a period of either twelve months or six months; but a supplementary rate can be made in respect of any period within a financial year (t). [169]

**Liability of Occupier.**—A drainage rate is assessed upon the occupier of the hereditament at the date of making the rate and if the hereditament is unoccupied on the owner (u). If the name of any person liable to a rate is not known, sect. 26 (5) of the Act makes it sufficient to assess him as "the occupier," but naming the premises in respect of which the assessment is made.

Sect. 26 of the Act of 1930 largely alters the incidence of drainage rates. Under the repealed legislation, a drainage rate was generally regarded as an owner's tax and a number of the local Acts state this specifically. The Act of 1930 contains no provision prohibiting the incidence of a rate being altered by an agreement between the owner and the occupier, and it would seem that as between them, the incidence will be governed by the provisions of the lease or tenancy agreement.

Although the full amount of the rate is recoverable from any person who is or is deemed to be the occupier during any part of the rate

(q) S. 24 (8) (9). An order may be varied or revoked by a subsequent order see s. 24 (10).

(r) S. 26 (3). For form of rate book, see Land Drainage (Form of Rate Book) Regulations, 1931; S.R. & O., 1931, No. 112.

(s) S. 26 (1). The resolution must contain the prescribed particulars. See Land Drainage (Rates) Regulations, 1930; S.R. & O., 1930, No. 955. These regulations also prescribe the form of demand note.

(t) S. 26 (2).

(u) Ss. 24 (3), 26 (4) (a).

period (*a*), yet he is only chargeable for the proportionate part of the occupier's rate in respect of the period of his occupancy (*b*). If he is required to pay the whole rate he may recover the excess from any other person who was in occupation during part of the rate period (*c*). An occupier who pays an owner's drainage rate is entitled to recover the amount from the owner (*d*). A drainage board need not enforce payment of any rate where the amount is, in their opinion, insufficient to justify the expense of collection (*e*). [170]

**Publication of Rate.**—A rate is not valid unless, within ten days of it being made, notice thereof be given by advertisement in one or more local newspapers or by posting the notice in one or more public or conspicuous places or situations in the drainage district (*f*). [171]

**Amendment of Rate.**—Any necessary amendments may, at any time, be made by a drainage board in the current or last preceding drainage rate for the purpose of making the rate conform with the Act. In particular, the board may (*1*) correct any clerical or arithmetical error, or any erroneous insertions, or omissions, or any misdescriptions; and (*2*) make any additions or corrections necessary by reason of any change in occupation, or the division into parts of a single hereditament (*g*).

Notice of any amendment must be served on every owner and occupier affected (*h*). [172]

**Appeal against Rate.**—Any aggrieved owner or occupier has a right of appeal to quarter sessions against a drainage rate, or an amendment of it by the drainage board, on any ground, not being one on which an appeal to the justices might have been made under sect. 29 of the Act (*i*). On an appeal to quarter sessions, the court may confirm, annul or modify the rate (*k*).

Notice of appeal, specifying the grounds of appeal, must be given within twenty-eight days after the making of the rate, or where the rate is amended, after notice of the amendment of the rate (*l*). The notice must be served on (*1*) the court, (*2*) the drainage board, and (*3*) if relating to a hereditament not in the occupation or ownership of the appellant, on the occupier and the owner thereof. [173]

Inasmuch as the period for appeal runs from the date of the resolution of the drainage board authorising the affixing of their seal to the rate, the publication of notice of the rate under sect. 27 will ordinarily be the only information available that a rate has been made, and to defer an appeal until a demand note has been received will put an intending appellant out of time. The notice already mentioned of the making of the rate may possibly not be given until ten days after

(*a*) S. 26 (4) (*b*).

(*b*) S. 26 (4) (*d*). The board may, however, provide for changes in occupation by amending a rate under s. 28 (1).

(*c*) S. 26 (4) (*e*).

(*d*) S. 26 (4) (*c*).

(*e*) S. 26 (6).

(*f*) S. 27.

(*g*) S. 28 (1).

(*h*) S. 28 (2). Publication as in s. 27 is not required. As to service of the notice, see s. 75. As to an appeal against an amendment of a rate, see *infra*.

(*i*) S. 30 (1). As the appeal is not against a decision of justices the Summary Jurisdiction (Appeals) Act, 1933 (26 Statutes 545) does not apply.

(*k*) S. 30 (3).

(*l*) S. 30 (2).

the rate was made, and in such an instance the appellant would be allowed eighteen days only in which to decide whether he should or should not appeal.

With regard to the grounds for appeal, whereas before the Act of 1930 "no benefit" was a good ground for appeal, it would seem from the terms of sect. 24 (3) that now the mere fact that land is within a drainage district makes it rateable.

The appellant and the drainage board may also agree under sect. 30 (4) of the Act to refer the matter to the arbitration of a person agreed on, or in default of agreement appointed by the M. of A. & F. The costs of and incidental to the hearing and award are in the discretion of the arbitrator, and if not agreed, are to be taxed as part of the costs of the appeal to quarter sessions. [174]

**Recovery of Rate.**—Arrears of a drainage rate are recoverable by a drainage board in the same manner as arrears of the general rate are recovered by a rating authority under the R. & V.A., 1925 (m). The procedure thus applied is that a complaint should be made to two justices of the non-payment of the rate, and an application made for the issue of a distress warrant on the goods of the person in default (n). If no sufficient distress is found, an application can then be made to the justices under sect. 2 of the Distress for Rates Act, 1849 (o), for the committal of the defaulter to prison, but sect. 2 (3) (b) of the Act of 1925 (p) forbids the justices to commit any person to prison who proves to their satisfaction that his failure to pay the rate is due to circumstances beyond his control.

On proceedings for recovery of arrears of a drainage rate, the defendant is not entitled, by way of defence, to raise any matter which he could have raised on an appeal to (i.) a court of quarter sessions against the rate or any amendment thereof; or (ii.) a court of summary jurisdiction against an apportionment or determination of annual value by a drainage board (q).

Goods outside the area of a drainage board may be seized under a distress warrant for the recovery of a drainage rate made by the board (r).

It is important to note that the powers conferred by the Land Drainage Act, 1930, for the recovery of rates are by sect. 31 (5) to be in addition to and not in substitution for those conferred by any local Act. The provisions of local Acts in this respect differ considerably, and in many cases include the power to recover a penalty of a stated sum in the £, if the rates are not paid by a specified date. Reference to the local Acts in any particular instance is therefore necessary.

A drainage board may, by resolution, authorise their clerk, either generally or in respect of any special proceedings, to institute, carry on or defend any proceedings in relation to rates (s). [175]

**Incidence of Rates raised to meet Loan Charges.**—In the case of any rates raised to meet charges in respect of liabilities incurred before

(m) S. 31 (1) of the Act of 1930.

(n) See R. & V.A., 1925, s. 2 (3) and the Distress for Rates Act, 1849; 14 Statutes 619, 511.

(o) 14 Statutes 512.

(p) *Ibid.*, 619.

(q) S. 31 (3). See also *ante*, p. 89.

(r) *Morse v. Ouse Drainage Board*, [1931] 1 K. B. 109; Digest (Supp.).

(s) Act of 1930, s. 31 (2).

August 1, 1930, the proviso to sect. 24 (2) of the Land Drainage Act, 1930, applies the provisions as to the incidence of rates in sect. 38 of the Land Drainage Act, 1861 (*t*), or the corresponding provisions of any local Act, in substitution for sect. 24 (2) of the Act of 1930.

Sect. 46 (3) of the Act of 1930 also provides that money borrowed under that Act in respect of which the drainage board have determined that some part only of the drainage district shall be liable, shall be repayable only out of rates levied on that part of the drainage district.

Sect. 38 of the Land Drainage Act, 1861, above mentioned, provides that a rate levied for defraying the cost of improvements in existing works or new works involving an expenditure of more than £1,000 shall be deemed to be a special rate and a tax on the owners of property. The procedure under sect. 38 (2) of the Act of 1861 for the recovery of such a rate, in default of payment by the owner, is to levy the amount upon and enforce payment against the occupier of the land and his goods and chattels in the same manner as a rate due from that occupier, with the limitation that the occupier's liability must not exceed any rent due, or which may accrue due, to the owner during the period of the tenant's occupancy. In such circumstances, the occupier is given the right in the absence of any agreement to the contrary, to deduct any amount so paid from the rent, and the drainage board's receipt for the rate is a discharge as against the owner. For the purposes of this section, "owner of land" is defined in sub-sect. (3) as the person for the time being entitled to receive the rack-rent of the land on his own account or who would be entitled to receive it if the land were let at a rack-rent. [176]

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(*t*) 17 Statutes 1058.

# DRAINS

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*See also titles :*

BUILDING BYE-LAWS ;  
DRAINS, CONNECTION OF WITH  
SEWERS ;

POLLUTION OF RIVERS ;  
SEWERS AND DRAINS ;  
TRADE EFFLUENTS.

[NOTE.—The local authorities for the purposes of the P.H.A., 1875, and amending Acts are the councils of boroughs, urban districts and rural districts. In the Act of 1875 the expressions "urban sanitary district" and "urban authority" cover boroughs and borough councils as well as urban districts and urban district councils. As under sect. 1 (2) of the L.G.A., 1933 (26 Statutes 306), a borough will not, in a future Act, be referred to as an urban district, the use in a title of these terms will, as time goes on, give rise to confusion, and it has been thought advisable to substitute references to a borough or urban district for references in the Act of 1875 to an urban sanitary district, and to use the word "council" instead of "local authority."] [177]

## DEFINITION

**Definition of "Drain."**—For the purposes of the P.H.A., 1875, the word "drain" is defined to *mean* "any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a

cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed" (a). Sect. 2 of each of the amending Acts of 1890 and 1907 (b), provides that the amending Act shall be construed as one with the P.H.A., and sect. 1 (2) of the P.H.A., 1925 (c), requires Parts I. to VIII. of that Act to be construed as one with the P.H.As., 1875 to 1907, with the result that the definition already set out applies in the interpretation of the amending Acts of 1890, 1907 and 1925 (except Part IX. of the last Act).

For certain limited purposes a pipe which would be a sewer and not a drain as above-defined may, under sect. 19 of the P.H.A. Amendment Act, 1890 (d), be dealt with as if it were a drain.

The effect of the word "mean" in this, as in other definitions, is to limit the meaning of the word "drain" to those things which are specifically described in the definition, and to exclude everything else.

"*One Building Only.*"—Two semi-detached houses belonging to the same owner and built on one plot may be "one building" (e); but no general rule can be laid down as to whether a pair of semi-detached houses are "one building only" within the meaning of the section or not, even though they be under one continuous roof. It is in each case a question of fact.

"*Premises within the same Curtilage.*"—The interpretation of this phrase has been said not to depend upon conveyancing law, but upon considerations relating to the mode of building, the object with which buildings have been erected, and the manner in which they have been used (f). [178]

Illustrations of the application of the phrase are afforded by two cases in the Court of Appeal, which arose in London on the similar definition of "drain" contained in sect. 250 of the Metropolis Management Act, 1855 (g).

In one of these cases (h) the defendant was the owner of the Lowther Arcade, consisting of a central passage, with a number of houses and shops on either side, the whole being on his property, and there being no right of way along the passage, which was roofed, and could be closed by gates placed at each end. The arcade was drained by means of a conduit which ran down the central passage to a main sewer outside receiving in its course the drainage of the houses. The vestry claimed a declaration that the defendant was liable to abate and keep abated any nuisance arising from the drainage of the arcade. The Court of Appeal, affirming the decision of the Queen's Bench Division, held that the central conduit was not a "drain of and used for the drainage of one building only, or premises within the same curtilage," and was therefore a "sewer" within the definition of that term in sect. 250 of the Act of 1855, vested in and repairable by the vestry. In the other

(a) P.H.A., 1875, s. 4; 13 Statutes 624.

(b) 13 Statutes 824, 911.

(c) *Ibid.*, 1115.

(d) *Ibid.*, 831; and see *post*, pp. 104, 105.

(e) *Hedley v. Webb*, [1901] 2 Ch. 126; 41 Digest 3, 5; *Humphery v. Young*, [1903] 1 K. B. 44; 41 Digest 3, 6.

(f) *Pilbrow v. St. Leonard, Shoreditch, Vestry*, [1895] 1 Q. B. 433, *per Lord ESHER*, M.R. and LOPEZ, L.J., at pp. 437, 440; 41 Digest 11, 80.

(g) 11 Statutes 946.

(h) *St. Martin-in-the-Fields Vestry v. Bird*, [1895] 1 Q. B. 428; 41 Digest 11, 81.

case (*i*), two blocks of buildings, belonging to the same owner, and containing forty-six sets of apartments, were separated by a causeway or yard twenty feet wide, of which one end was closed by a wall, and the other opened into a public thoroughfare. Access to one of the blocks was obtained from the causeway, but the only access to the other block was from the public thoroughfare. The premises were drained by means of branch drains running from the sets of apartments into a main drain which ran under the causeway and communicated with a sewer. The premises were so constructed as to be enclosed by continuous boundary walls, with the exception of the opening from the causeway into the thoroughfare. It was held that, having regard to their construction, the two blocks of buildings were "premises within the same curtilage," within the meaning of sect. 250, and that therefore the main drain used for their drainage was a "drain" and not a "sewer."

These cases were considered by a Divisional Court in *Harris v. Scurfield* (*k*). Eighteen dwelling-houses in Sheffield, with pavements in front of them, stood grouped about an open space of ground. At one side of the space was a boundary wall. Access could be obtained to the space or court by means of a main entrance from a main thoroughfare, through a partially enclosed space of ground, and also by means of two narrow passages between certain of the houses. There was certain common accommodation for the tenants of the houses, namely, two ash pits and thirteen water-closets. It was held that the eighteen dwelling-houses were not premises within the same curtilage. Lord ALVERSTONE said "there is no definition of a curtilage which would include the case of a number of houses separately occupied by different people, simply because there is a common access, and to some extent common accommodation."

A large number of other legal decisions also exist, and in most of these the pipe was held to be a sewer, not a drain. They will be referred to in the title SEWERS AND DRAINS. [179]

**General Effect of Definition.**—Summarised, therefore, the word "drain," as used in the P.H.As., describes a pipe which is used for the drainage of a single building or premises within the same curtilage into a cesspool or like receptacle, or into a sewer (*m*).

The word is used only in connection with buildings or land with buildings thereon, since a curtilage cannot exist except as an adjunct of buildings. Many pipes or channels, which for other purposes, or in popular parlance, are called "drains" are not included. A new river or cut made for the purpose of draining the Bedford Level was held not to be a "public or parish drain" within the meaning of a local drainage Act (*n*).

The word "drain" is further limited through the definition in sect. 4 of the P.H.A., 1875 (*o*), being confined to drains which communicate with a cesspool or other like receptacle, or with a sewer.

(*i*) *Pilbow v. St. Leonard, Shoreditch, Vestry*, [1895] 1 Q. B. 433; 41 Digest 11, 80.

(*k*) (1904), 91 L. T. 536; 41 Digest 3, 7.

(*m*) *Sutton v. Norwich Corpn.* (1858), 27 L. J. (Ch.) 739; 41 Digest 3, 1.

(*n*) *Coulton v. Ambler* (1844), 13 M. & W. 403; 41 Digest 52, 379.

(*o*) 18 Statutes 624.

Hence it is not every means of draining buildings which will fall within the definition. A direct communication between a house and a river, a canal or the sea, may be excluded. [180]

**A Drain must run in a Defined Course.**—A drain need not be underground, but it is essential that its course, whether above or below ground, should be defined so that it is capable of being directed, remedied, and effectually dealt with. Hence it has been decided that a “dumb-well,” that is, a well into which waste water flows through pipes, and thence escapes by percolation, is not a “drain or watercourse” within the meaning of these words as used in sect. 67 of the Highway Act, 1835 (p). But the pipe leading into such a dumb-well or other excavation will itself be a drain within that section (q). [181]

**A Drain need not carry Sewage.**—It is not essential that a drain should carry off sewage. The pipes which carry off surface water only from the roofs and yards of houses are within the definition of the word “drain” (r).

In districts where sect. 36 of the P.H.A. Amendment Act, 1907 (s), has been put in force by an order of the M. of H., no pipe used for the carrying off of rain-water from any roof may be used for the purpose of carrying off the soil or drainage from any privy or water-closet. [182]

**Agreement to regard Sewer as Drain.**—As the result of an agreement between a private individual and the council, a line of pipes which would under ordinary circumstances be a sewer, may remain and be regarded as a drain as between the parties to the agreement, and the courts will be slow to allow the burden of such an agreement to be shifted to the council because, as the result of altered circumstances, the line of pipes has become a sewer within the meaning of the P.H.A.—see the judgments in *Butt v. Snow* (t). But it would seem that as between the council and third parties, not parties to the agreement, the line of pipes, if it complied with the definition of a “sewer,” would be a sewer vested in the council, although as between the parties to the agreement it was only a drain (u). An owner is usually ready to make an agreement of this kind, as the drainage of buildings by a combined operation is less costly to him than the construction of a separate drain to each building. [183]

#### PROVISION OF DRAINS

**Acquisition of Rights of Drainage.**—*By Grant.*—A right of drainage may be acquired like any other easement by express or implied grant.

An agreement under seal by a council with a private individual whereby, for an annual payment, he was empowered to drain through their sewer all sewage from his property either from existing houses, or houses later erected, is a valid agreement, and is not *ultra vires*; and it is binding upon the council, notwithstanding that the agreement

(p) *Croft v. Rickmansworth H. B.* (1888), 39 Ch. D. 272; 41 Digest 46, 334.

(q) *A.-G. v. Copeland*, [1902] 1 K. B. 690; 41 Digest 46, 336.

(r) *Holland v. Lazarus* (1897), 66 L. J. (Q. B.) 285; 41 Digest 14, 98; approved by C. A. in *Silles v. Fulham Borough Council*, [1903] 1 K. B. 829; 41 Digest 21, 160.

(s) 13 Statutes 924.

(t) (1903), 67 J. P. 454; 41 Digest 9, 63.

(u) *Per CHANNELL, J.*, *ibid.*, at p. 457.

has turned out to be disadvantageous to the ratepayers, and that by a new enactment the council had been forbidden to drain into the river into which at the time of the agreement their sewer emptied (a).

[184]

*By Prescription.*—A right of drainage into a stream or watercourse may be obtained by prescription (b), and such a right is not necessarily confined to discharge into natural streams.

It would appear, however, that “when the pollution is increasing, and gradually increasing, from time to time, by the additional quantity of sewage poured into it, the persons who allow the polluted water to flow into the stream are not at liberty to claim any right or prescription” (c).

Private individuals have no greater rights than those actually accorded to them by grant or acquired by prescription, and the burden so created cannot be increased without consent (d); and local authorities have no greater rights in this respect than private individuals (e).

[185]

**Duty of Owners and Occupiers to Provide Effectual Drainage.**—It is the duty of every owner or occupier of any house within a borough or district to provide a drain sufficient for the effectual drainage thereof; and it is the duty of the council to see that this is done (f). But the existence of this duty does not justify an owner or occupier in committing a trespass, e.g. in laying, without permission, a drain through land, or across a road, vested in another person (g). To meet this difficulty, sect. 37 of the P.H.A., 1925 (h), which allows a council to lay or relay a drain to connect with a sewer in a street, not a highway repairable by the inhabitants at large, should be adopted by the council. They could lay a new sewer or extend an existing sewer, so as to reach the premises, under sect. 16 of the P.H.A., 1875 (i).

Under sect. 23 of the P.H.A., 1875 (k), where any house within their borough or district is without a drain sufficient for effectual drainage, the council must by written notice require the owner or occupier of the house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the council are entitled to use and which is not more than one hundred feet from the site of the

(a) *New Windsor Corp. v. Stovell* (1884), 27 Ch. D. 665; 41 Digest 32, 237.

(b) *R. v. Staines L. B.* (1888), 60 L. T. 261, 264; 41 Digest 16, 118.

(c) *Goldsmid v. Tunbridge Wells Improvement Commissioners* (1865), L. R. 1 Eq. per Sir J. ROMILLY, M.R., at p. 169; on appeal the court assumed, without expressing an opinion on the point, that a right of drainage might be acquired, but they thought that it could be acquired only by a continuance of a perceptible amount of injury for twenty years; *ibid.* (1866), 1 Ch. App. 349; 36 Digest 227, 685.

(d) *Metropolitan Board of Works v. London and North Western Rail. Co.* (1881), 17 Ch. D. 246; 41 Digest 44, 321.

(e) *A.-G. v. Acton L. B.* (1882), 22 Ch. D. 221; 41 Digest 19, 150.

(f) P.H.A. 1875, s. 23; 13 Statutes 635.

(g) See *Russell v. Knight*, (1894), Times May 9; 41 Digest 44, 318; and *Wood v. Ealing Tenants, Ltd.*, [1907] 2 K. B. 390; 41 Digest 44, 319. The Ealing case was distinguished in *Grant v. Derwent*, [1929] 1 Ch. 390, C. A.; Digest (Supp.). It was there held that the owner of the subsoil of a dedicated street in which a drain had been laid by the council under s. 18 of the P.H.A. Amendment Act, 1890, cannot bring an action for trespass against the person at whose request the drain was laid.

(h) 13 Statutes 1131.

(i) 13 Statutes 633.

(k) P.H.A., 1875, s. 23; 13 Statutes 635.

house ; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place, not being under any house, as the council direct ; and the council may require any such drain or drains to be of such materials and size, and to be laid at such level, and with such fall, as on the report of their surveyor appears to them to be necessary (l). [186]

The word " house " includes schools, also factories and other buildings in which persons are employed (m). This definition extends the meaning of the word " house," which *prima facie* means a dwelling-house (n) ; and presumably the word would apply to any building in which persons are employed (o). A high school for girls where no boarders are received is a " house " subject to inspection under sect. 91 (5) of the Act of 1875 when a nuisance for overcrowding is believed to exist (p).

The notice to be given to the owner or occupier requiring the drains to be made under sect. 23 of the P.H.A., 1875, *ante*, must be given by the council after they have considered and exercised their discretion in the case before them. Subsequent ratification of a notice already given without their direction will not avail them. On the corresponding provision in sect. 73 of the Metropolis Management Act, 1855 (q), it was held that a notice by an inspector, without the direction of the vestry, was insufficient, and that expenses incurred on the owner's default in carrying out the requirements of the notice could not be recovered (r). It would seem, however, that if the service of a notice, or similar act, is obligatory, and not discretionary, a public body may delegate the duty, in the first instance, to one of their officers (s).

[187]

" *Drain Sufficient for Effectual Drainage.*"—Sect. 23 of the P.H.A., 1875 (t), is sometimes erroneously considered as enabling a council to require an owner to alter his system of drainage, though it may be sufficient in itself, and to justify their requiring him to abolish a cesspool, and drain into a sewer. This cannot be done under the section, if the existing drains are in fact sufficient, even if there is a convenient sewer (u). Nor can the council require an owner to provide new drains communicating with a new sewer which they have constructed in order to improve their whole system (x). If they wish to alter a drain, which is " sufficient," in order to suit their system, they must

(l) A form of notice, and of Surveyor's Report as to drainage, will be found in 12 Encyclopaedia Forms 332, 333.

(m) P.H.A., 1875, s. 4, as in part repealed by the Factory and Workshop Act, 1878, s. 107, Sched. VI. ; see 13 Statutes 625.

(n) *Surman v. Darley* (1845), 14 M. & W. 181 ; 19 Digest 523, 3846.

(o) In *Wootton v. Bishop* (1907), 96 L. T. 705 (43 Digest 1058, 1), it was held to be a question of fact whether particular premises were a " house " within s. 62 of the P.H.A., 1875.

(p) *Wimbledon U.D.C. v. Hastings* (1902), 87 L. T. 118 ; 36 Digest 179, 245.

(q) 11 Statutes 898.

(r) *St. Leonard's, Shoreditch, Vestry v. Holmes* (1885), 50 J. P. 132 ; 41 Digest 41, 299.

(s) *Firth v. Staines*, [1897] 2 Q. B. 70 ; 41 Digest 41, 300, and *L.C.C. v. Hobbs* (1896), 75 L. T. 687 ; 1 Digest 273, 51. And see s. 277 of the L.G.A., 1933 ; 26 Statutes 452, as to power of local authority to authorise a member or officer to institute, defend or appear for them in proceedings.

(t) 13 Statutes 635.

(u) See *A.-G. v. Clerkenwell Vestry*, [1891] 3 Ch. 527 ; 41 Digest 42, 304, and *Mollov v. Gray* (1889), 24 L. R. Ir. 258 ; 41 Digest 38, r.

(x) See *St. Martin-in-the-Fields Vestry v. Ward*, [1897] 1 Q. B. 40 ; 41 Digest 26, 204.

proceed under sect. 24 of the Act of 1875 (*a*), and the necessary expenditure must be defrayed by them.

Similarly where existing privy accommodation on premises consists of an earth-closet, the council should carefully consider, having regard to sect. 37 of the Act (*b*) which recognises approved earth-closets as suitable, whether the provision of a w.c. should be required by them. [188]

*"One Hundred Feet from the Site of such House."*—Apparently the measurement must be taken, not from the curtilage of the premises, but from the house or some domestic office occupied therewith (*c*). The council cannot compel the connection of a drain with a sewer which is more than 100 feet from the site of the house to be drained. This distance is to be measured in a straight line on a horizontal plane, or, in common parlance, "as the crow flies" (*d*). The phrase "site of such house" appears to mean that piece of land on which the house itself stands (*e*).

If there is no existing covered cesspool available, the council may require the owner or occupier of the premises to provide a cesspool (*f*). [189]

*Discretion of Council as to Character of Drains.*—The council have a discretion in deciding on the character of the drain required, and if such discretion be justly exercised it will not be interfered with (*g*).

The drain may be laid partly in and partly above ground, or entirely above ground, as the council direct (*h*). [190]

*Procedure on default after Notice.*—If the notice is not complied with, the council may, after the expiration of the time specified in the notice, do the work required, and may recover in a summary manner the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses (*i*). [191]

*Connecting House with New Sewer.*—Where, in the opinion of the council, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer than in constructing a new sewer and causing such drains to empty therein, they may construct such new sewer, and require the owners or occupiers of the houses to cause their drains to empty therein, and may apportion as they deem just the expenses of the construction of the sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners, or may by order declare the same to be private improvement expenses (*k*).

An appeal against a decision of the council under this provision

(*a*) 18 Statutes 636.

(*b*) *Ibid.*, 641.

(*c*) *Meyrick v. Pembroke Corpns.* (1912), 76 J. P. 365; 41 Digest 36, 267.

(*d*) *Mouflet v. Cole* (1872), L.R. 8 Exch. 32; 42 Digest 684, 977.

(*e*) *Blashill v. Chambers* (1884), 14 Q. B. D. 479; 38 Digest 166, 111; and *Wright v. Wallasey L.B.* (1887), 18 Q. B. D. 783; 7 Digest 549, 273.

(*f*) *Chelmsford Corpns. v. Bradbridge*, [1916] 2 K. B. 38; 41 Digest 37, 268.

(*g*) See *Austin v. St. Mary, Lambeth, Vestry* (as to materials to be used) (1858), 27 L. J. (Ch.) 388, 677; 41 Digest 38, 277; and *Woodward v. Cotton* (as to size of drain) (1834), 1 Cr. M. & R. 44.

(*h*) *Morris v. Mynyddishwyn U.D.C.*, [1917] 2 K. B. 309; Digest (Supp.).

(*i*) P.H.A., 1875, s. 23; 18 Statutes 635.

(*k*) *Ibid.* See s. 257 (18 Statutes 732), as to method of disputing an apportionment.

would lie to the M. of H. under sect. 268 of the Act of 1875 against the notice demanding payment of the expenses (*l*). [192]

*Where a House is newly Erected or Rebuilt.*—Sect. 25 of the P.H.A., 1875 (*m*), prohibits in any borough or urban district the erection of any house or the rebuilding of any house which has been pulled down to or below the ground floor, or the occupation of any house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as on the report of the surveyor may appear to the borough council or U.D.C. to be necessary for the effectual drainage of the house. The drain or drains so to be constructed must empty into any sewer which the council are entitled to use, and which is within 100 feet of some part of the site of the house to be built or rebuilt. If no such means of drainage are within that distance, then the drain or drains must empty into such covered cesspool or other place, not being under any house, as the council direct (*n*).

The building bye-laws of a borough or district council usually require plans and specifications of the buildings and their drainage to be submitted for approval. The council refer these to the surveyor, and he reports. The council then decide as to the sufficiency of the proposed system of drainage and give any necessary directions to the builder. Their decision would appear to be final so long as they only take into consideration the points mentioned in the section. If they allow other matters to influence them, an owner may ignore their refusal to approve his plans.

Though the section above-referred to applies only to borough and urban district councils, the M. of H. may, under sect. 276 of the Act of 1875 (*o*), confer on a R.D.C. the like powers with respect to any particular part of their rural district. [193]

In considering what is "necessary for the effectual drainage" of a new house under the section, the council must confine themselves to the matters specified, namely, the size, materials, level, and fall of the drains, and they must further confine themselves to the consideration only of what is necessary for the particular house in question. They cannot, for instance, base their requirements on what is desirable, having regard to the disposal of the sewage of the borough or district generally, and on that ground insist on the construction of separate drains for sewage and for surface water (*p*). Such a matter might, however, be provided for in building bye-laws made under sect. 157 of the Act of 1875 (*q*). It is, moreover, competent for the council to require a separate drain for each house, though only semi-detached, or forming part of a block constituting only one building (*r*). [194]

*By Providing Sinks and Drains for Refuse Water.*—Sect. 49 of the P.H.A. Amendment Act, 1907 (*s*), enables the council of a borough or district to which it has been applied by order of the M. of H., summarily to require the provision of sinks and drains for refuse water. Under that provision, if it appears to the council, on the report of their

(*l*) 13 Statutes 736.

(*m*) *Ibid.*, 636.

(*n*) P.H.A., 1875, s. 25; 13 Statutes 636.

(*o*) 13 Statutes 741.

(*p*) *Matthews v. Strachan*, [1901] 2 K. B. 540; 41 Digest 37, 270. See also title STORM WATER DRAINAGE.

(*q*) *Ibid.*, per RIDLEY, J., at p. 548.

(*r*) *Woodford U.D.C. v. Stark* (1902), 86 L. T. 685; 41 Digest 37, 271.

(*s*) 13 Statutes 930.

surveyor, medical officer, or sanitary inspector, that any building is not provided with a proper sink or drain or other necessary appliances for carrying off refuse water from the building, they may give notice in writing to the owner or occupier requiring him, in the manner and within the time to be specified in the notice, not being less than twenty-eight days, to provide such sink, drain, or other appliances. If the owner or occupier makes default, he is liable to a penalty, and the council may themselves provide such sink, drain or other appliances and recover the expenses incurred from the owner or occupier summarily as a civil debt. [195]

**Agreement with Council to Construct Drains.**—Where Part III. of the P.H.A. Amendment Act, 1890, is in force, the council may agree under sect. 18 (3) of that Act (*t*), with the owner of premises that the work on any sewer or drain, or part thereof, which the owner is required, or desires to make, alter or enlarge, shall be done by the council.

Where sect. 38 of the P.H.A., 1925 (*u*), has been adopted, the provisions last referred to are repealed, and instead it is provided that the council, by agreement with the owner or occupier of any premises, may make, alter, or enlarge any drain or sewer, or effect any connection between a drain and a sewer, which the owner or occupier is required or desires to make, alter, enlarge, or effect (*a*).

Sect. 37 of the Act of 1925 (*b*), which may be adopted by a borough or district council, empowers the council to lay drains in private streets by agreement with and at the expense of any person owning or occupying premises abutting on the street. [196]

**Reconstruction of Drain.**—In boroughs or districts where sect. 39 of the P.H.A., 1925 (*c*), is in force, it is unlawful for any person, except in case of emergency, to reconstruct or alter the course of any drain communicating with a sewer or cesspool or other receptacle for drainage, without giving at least twenty-four hours' notice in writing to the council. If the work has been executed without notice in any emergency, the drain must not be covered up without giving the council at least twenty-four hours' notice in writing. Free access to the drain or work of reconstruction or alteration must be afforded to the surveyor, sanitary inspector, or any officer of the council authorised by them in writing for the purpose of inspection.

This provision does not apply to drains constructed by a railway company and situate under, across, or along their line; nor to drains vested in dock or harbour owners, trustees or conservators (*d*). [197]

#### MAINTENANCE OF DRAINS

**Recovery of Expenses when Sewer mistaken for Drain.**—When the owner or occupier of premises has under legal compulsion incurred expenses in repairing a drain which he subsequently discovers is a sewer which a council are liable to repair, he may recover such expenses

(*t*) 18 Statutes, 831.

(*u*) *Ibid.*, 1132. This section may be adopted by any borough or district council, see ss. 3, 4.

(*a*) S. 38 (5).

(*b*) 18 Statutes 1131.

(*c*) *Ibid.*, 1132. This section cannot be adopted by an R.D.C., but may in a rural district be put in force by an order of the M. of H. under s. 4 (2) of the Act.

(*d*) See s. 39 (5), (6).

from the council (*e*). The work must, however, be done under legal compulsion. A mere written intimation, under sect. 3 of the P.H. (London) Act, 1891 (*f*), of the existence of a nuisance, even if accompanied by a notice or threat to serve a statutory notice under sect. 4 of the Act if the repairs are not done within a certain time, does not amount to legal compulsion (*g*). Where, however, an "intimation" notice is complied with under protest the money expended can be recovered (*h*). On the other hand, the service of a notice under sect. 4 (4) of the Act of 1891 (*i*), does amount to legal compulsion, because in default of compliance with it the defaulter renders himself liable to a penalty (*k*).

Under the P.H.A., 1875, there is no provision for the giving of a preliminary intimation of the existence of a nuisance as there is in sect. 3 of the P.H. (London) Act, 1891; and it has, accordingly, been held that a notice to abate a nuisance, even though the notice is not strictly a statutory notice, is sufficient to justify the recipient in acting at once and to enable him to recover expenses mistakenly incurred in repairing a sewer vested in the council (*l*). The grounds of the decision were that in the case of a nuisance it is necessary to act promptly, and under such circumstances the plaintiff is not bound to show a direct and irresistible compulsion, but it is sufficient to show that the work was done under pressure which practically amounted to compulsion.

In a later case (*m*), RIDLEY, J., distinguished the decision last referred to on the ground that in the case before him there was no immediate necessity for executing the work at once, and he held accordingly that the owner was not entitled to recover from the council the cost of relaying a conduit which proved to be a sewer, and not a drain. [198]

#### NUISANCES IN CONNECTION WITH DRAINS

**Duty of Council.**—Every council is required by sect. 40 of the P.H.A., 1875 (*n*) to provide that all drains within their borough or district shall be constructed and kept so as not to be a nuisance or injurious to health; and it is further their duty to cause to be made from time to time an inspection of their borough or district, with a view to ascertaining what nuisances exist calling for abatement and to enforce the provisions of the Act of 1875 to abate the same (*o*).

There is no absolute right, in the first instance, of entry into premises

(*e*) *Andrew v. St. Olave's Board of Works*, [1898] 1 Q. B. 775; 36 Digest 234, 737, followed in *Cree v. St. Pancras Vestry*, [1899] 1 Q. B. 693; 38 Digest 107, 764.

(*f*) 11 Statutes 1027.

(*g*) *Proctor v. Islington Metropolitan Borough* (1903), 67 J. P. 164; 36 Digest 231, 713; *Oliver v. Camberwell Borough Council* (1904), 90 L. T. 285; 36 Digest 232, 717, and see *Thompson and Norris Manufacturing Co., Ltd. v. Hawes* (1895), 73 L. T. 369; 36 Digest 231, 712; and *Harris v. Hickman*, [1904] 1 K. B. 13; 36 Digest 231, 715.

(*h*) *Wilson's Music, etc. Co. v. Finsbury Borough Council*, [1908] 1 K. B. 563; 36 Digest 232, 718.

(*i*) 11 Statutes 1029.

(*k*) *Andrew v. St. Olave's Board of Works*, *supra*; *Gebhardt v. Saunders*, [1892] 2 Q. B. 452; 36 Digest 231, 716.

(*l*) *North v. Walthamstow U.D.C.* (1898), 62 J. P. 836; 36 Digest 234, 738.

(*m*) *Ellis v. Bromley R.D.C.* (1899), 81 L. T. 224; 41 Digest 21, 159.

(*n*) 18 Statutes 642.

(*o*) P.H.A., 1875, s. 92; 18 Statutes 662.

for the purpose of inspection; but if admission be refused an order of justices may be obtained under sect. 102 of the Act of 1875 (*p*) whereby entry for inspection can be enforced.

Sect. 7 of the Housing of the Working Classes Act, 1885 (*q*), also imposes on all local authorities entrusted with the execution of laws relating to public and local government a duty to put in force their powers so as to secure the proper sanitary condition of all premises within their areas.

Where an information was filed at the relation of a council against persons to abate a nuisance arising from the discharge of sewage into a brook, it was held to be no answer that the council had power themselves to remedy the evil by making sewers, on the ground that it was their duty to prevent a nuisance arising in their district instead of putting the ratepayers to the expense of additional works (*r*). [199]

**Methods of dealing with Nuisances in Drains.**—Nuisances in connection with drains may be dealt with by the council (1) under sect. 91 of the P.H.A., 1875, which provides for the summary abatement of nuisances generally (*s*); or (2) under sect. 41 of that Act (*t*).

(1) *Procedure under Sect. 91 of the P.H.A., 1875.*—The method of proceeding under this section where a drain is “so foul or in such a state as to be a nuisance or injurious to health” is dealt with under the title **NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACT.**

It has been pointed out on p. 95, *ante*, that what would otherwise be a sewer may, by agreement between the council and the owner or occupier, be regarded as a drain for all purposes as between the parties to the agreement.

If the pipe in connection with which a nuisance arises is a sewer, it would seem that if a nuisance is caused by a person unlawfully discharging into it sewage for which it was not designed, he is liable, and not the council, for the nuisance. In *Wincanton R.D.C. v. Parsons* (*u*) the defendant had discharged sewage from his house into a pipe running alongside a country road and made by a private owner for the purpose of taking the surface water. Owing to a break in the pipe it became blocked up, and the sewage collected and caused a nuisance. It was held that, even assuming that the pipe was a sewer, the defendant was liable for the nuisance as having been caused by his act or default (*a*). [200]

(2) *Procedure under Sect. 41 of the P.H.A., 1875 (b).*—Action by the council under this section must be preceded by a written application to them by a person stating that a drain on or belonging to premises in their area is a nuisance or injurious to health. The person making the application may be the surveyor or sanitary inspector.

(*p*) 13 Statutes 665.

(*q*) *Ibid.*, 808.

(*r*) *A.G. v. Colney Hatch Lunatic Asylum* (1868), 4 Ch. App. 146; 38 Digest 30, 171.

(*s*) 13 Statutes 661.

(*t*) *Ibid.*, 642.

(*u*) [1905] 2 K. B. 34; 41 Digest 6, 35.

(*a*) See, however, the earlier case of *Fordom v. Parsons*, [1894] 2 Q. B. 780; 36 Digest 236, 750. There a local authority had admittedly not discharged their obligations to repair a sewer, and it was held that they could not exercise the powers of ss. 94–96 of the P.H.A., 1875. This decision would apparently apply in a case where the connection of the drain with the sewer had been lawfully made under s. 21 of the Act of 1875.

(*b*) 13 Statutes 642.

Where sect. 34 of the P.H.A. Amendment Act, 1907 (*c*), is in force, sect. 41 of the Act of 1875 is extended so that the council may act on a written report of their surveyor or sanitary inspector giving them reason to suspect that a drain is a nuisance or injurious to health. The nuisance here referred to would seem to include anything offensive to the senses, not necessarily something injurious to health (*d*).

Upon receiving the written application complaining of a nuisance, the council should by their clerk, surveyor, or sanitary inspector, give twenty-four hours' notice to the occupier of their intention to empower their surveyor or sanitary inspector to enter the premises with or without assistants and open the ground and examine the drain. If the case is one of emergency, no such notice is necessary. It is the duty of the council to determine whether the case is one of emergency, and an entry to that effect should be recorded on their minutes. Such a determination is, however, not conclusive, and may be contested in subsequent proceedings. The notice (if any) should also be recorded on the minutes.

The power to enter, which can be given by the council only to their surveyor or inspector, must be in writing, and should be under the hand of the clerk of the council.

If, on examination, the drain is found to be in a proper condition, the examining officer is to cause the ground to be closed and any damage done to be made good as soon as possible, and the expenses of the works must be defrayed by the council.

If, on the other hand, the drain appears to be in bad condition or to require alteration or amendment, the council are forthwith to cause written notice to be given to the owner or occupier of the premises requiring him to do the necessary works forthwith or within a reasonable time to be specified in the notice. [201]

The notice to remedy the nuisance, if any, may be given by the council either to the owner or to the occupier, but the former is the person liable to the council for the expenses of remedying a nuisance under this section. Should the owner be prevented by the occupier from entering on the premises to remedy the nuisance, he should obtain a justice's order for entry under sect. 306 of the P.H.A., 1875 (*e*).

The giving of this notice is not a condition precedent to the right of the council to recover expenses incurred in remedying a nuisance (*f*).

The order of the council specifying the works necessary for the abatement of the nuisance is conclusive and cannot be discussed or altered by the justices in proceedings to enforce payment (*g*). The remedy is an appeal to the M. of H. under sect. 268 of the Act of 1875 when demand is made for payment of the expenses (*h*). Sect. 41 of the Act of 1875 applies to every case where the fact that a drain is in a

(c) 13 Statutes 924.

(d) See the following decisions on the construction of the phrase "nuisance or injurious to health"; *Banbury U.S.A. v. Page* (1881), 8 Q. B. D. 97; 36 Digest 156, 5; *Malton Board of Health v. Malton Farmers Manure Co.* (1879), 4 Ex. D. 302; 36 Digest 171, 128; *Bishop Auckland Local Board v. Bishop Auckland Iron Co.* (1882), 10 Q. B. D. 138; 36 Digest 178, 228.

(e) 13 Statutes 754.

(f) *Bromley Corpn. v. Cheshire*, [1908] 1 K. B. 680; 41 Digest 38, 282.

(g) See *St. Luke's Vestry v. Lewis* (1862), 1 B. & S. 865; 38 Digest 231, 609; *Hargreaves v. Taylor* (1863), 3 B. & S. 613; 41 Digest 39, 284; *Bogle v. Sherborne Local Board* (1880), 46 J. P. 675; 38 Digest 228, 595; *St. James and St. John, Clerkenwell Vestry v. Fearly* (1890), 24 Q. B. D. 703; 38 Digest, 231, 610.

(h) 13 Statutes 736.

bad condition or requires alteration or amendment causes the drain to be a nuisance or injurious to health, even though the alteration or amendment may involve an alteration of the structure (*i*). If the notice is not complied with, the person to whom it is given is liable to a penalty not exceeding 10s. for every day during which he continues to make default. Moreover the council may execute the works themselves. The council may recover their expenses in so doing from the owner in a summary manner or may declare them to be private improvement expenses (*k*).

A council who have executed the works necessary to abate a nuisance under sect. 41 on default of the owner, may obtain a declaration that by sect. 257 they are entitled to a charge on the land and premises in respect of the expenses incurred, together with interest and costs; the amount to be raised, if necessary, by a sale in chambers (*l*). [202]

**Testing Drains.**—Where sect. 45 of the P.H.A. Amendment Act, 1907 (*m*), has been put in force by order of the M. of H., the council have further powers of dealing with suspected drains. That section provides that if the medical officer, surveyor, or sanitary inspector reports to the council that he has reasonable grounds for believing that any drains of any building are so defective as to be injurious or dangerous to health, they may authorise such officer to apply the smoke or coloured water test, or other similar test (not including a test by water under pressure), to the drains, subject to the condition that either the consent of the owner or occupier of the building must be given to the application of the test, or an order of a court of summary jurisdiction obtained, authorising the application of the test. If on a test the drains are found to be defective, the council may, by notice specifying generally the defect, require the owner of the premises to do all works necessary for remedying it within a reasonable time named in the notice, and if he fails to do the work, the council may themselves do the work, and the expense may either be recovered from the owner summarily as a civil debt or may be declared by the council to be private improvement expenses, recoverable accordingly.

The owner and occupier of any building must give all reasonable facilities for the application of any test which has been consented to or authorised under sect. 45, and, if he fails to do so, he is liable in respect of each offence to a penalty not exceeding 40s. and to a daily penalty not exceeding 20s.

It is understood that the powers of this section are readily granted by the M. of H. to borough and urban district councils.

An appeal would apparently lie to quarter sessions against the council's requirement contained in a notice under the section (*n*). [203]

**Single Private Drains.**—Attempts have been made to improve the position of councils in relation to sewers which are not public sewers (1)

(*i*) *Southwold Corp. v. Crowdy* (1903), 67 J. P. 278; 41 Digest 40, 297. In this case *Fulham Vestry v. Solomon*, [1896] 1 Q. B. 198; 38 Digest 231, 612, where it had been held that the words "appears to be in bad order and condition," in the P.H. (London) Act, 1891, s. 41 (2), do not refer to defects in the *structure*, was distinguished and explained with some reference to its peculiar facts.

(*k*) See title PRIVATE IMPROVEMENT EXPENSES.

(*l*) *Walthamstow U.D.C. v. Henwood*, [1897] 1 Ch. 41; 38 Digest 171, 148.

(*m*) 18 Statutes 928.

(*n*) See s. 7 of P.H.A., Amendment Act, 1907; 18 Statutes 918.

by the enactment in sect. 19 of the P.H.A. Amendment Act, 1890 (*o*), and (2) by provisions in local Acts. These amending provisions have not in general worked satisfactorily, and it is to be hoped that the day is not far distant when this matter will be placed on a more logical basis, although admittedly it is one of great difficulty.

In general, the amending provisions in the Act of 1890 and local Acts have proceeded on the lines of allowing the council to serve a notice under sect. 41 of the P.H.A., 1875 (*p*), where more than one building is connected with a public sewer by a single private drain or by allowing the council to order houses to be drained by a combined operation, any such pipe to be regarded as a drain, not a sewer. The provisions of sect. 19 of the Act of 1890 have given rise to immense difficulties of interpretation. A discussion of the meaning of this section in the light of the numerous decisions will be found under the title **SEWERS AND DRAINS**. **[204]**

#### LONDON

The law relating to drains in the administrative County of London (other than the City of London) is contained mainly in the Metropolis Management Acts and in the P.H. (London) Act, 1891.

"Drain" is defined in sect. 250 of the Metropolis Management Act, 1855, as extended by sect. 112 of the Metropolis Management Amendment Act, 1862 (*q*), as meaning and including any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings occupied by different persons is conveyed, also any drain for draining any group or block of houses by a combined operation under the order of any vestry or district board (now metropolitan borough council), and also any drain for draining a block of houses by a combined operation laid or constructed before January 1, 1856, pursuant to an order or direction, or with the sanction or approval, of the Metropolitan Commissioners of Sewers. Drains for draining a block of houses by a combined operation sanctioned by other commissioners of sewers existing before the Metropolitan Commissioners of Sewers are not "drains," but "sewers" (*r*).

Where any drain is so constructed or repaired as to be a nuisance or injurious or dangerous to health, the person responsible is liable to a fine not exceeding £20 unless he can show that it was not due to any wilful act or neglect (*s*). A fine may also be imposed on any person who causes any drain to be a nuisance or injurious or dangerous to health by wilfully damaging it or by blocking it up or improperly using it (*t*).

A metropolitan borough council or their surveyor or inspector or other person appointed for the purpose has power to inspect any drains or other works connected therewith within the borough and to enter and open the ground for that purpose, but, except in cases of emergency,

(*o*) 13 Statutes 831. An adoptive provision adoptable by borough, urban and rural district councils, see ss. 3, 50; 13 Statutes 824, 842.

(*p*) *Ibid.*, 642. See also *ante*, p. 102.

(*q*) 11 Statutes 946, 993.

(*r*) *Appleyard v. Lambeth Vestry* (1897), 66 L. J. (Q. B.) 347, C. A.; 41 Digest 15, 111.

(*s*) P.H. (London) Act, 1891, s. 42; 11 Statutes 1051.

(*t*) *Ibid.*, s. 15; 11 Statutes 1034.

twenty-four hours' notice must first be given to the occupier of the premises to which the drain is attached or be left on the premises (*u*). The same power of entry exists in order to enable a borough council to ascertain the course of a drain, but in such case, if the premises are unoccupied, notice must be served on the owner (*a*). Where on inspection the drains are found to be in proper condition, the council must re-instate them, defraying all expenses and paying full compensation for all damage occasioned (*b*). If, on the other hand, the drains are found not to have been made according to the directions and regulations of the council, or contrary to statutory provisions, or if without the consent of the council or contrary to its order any drain is found to have been constructed, rebuilt or unstopped, the person offending is liable to a penalty not exceeding £10 and must cause the work to be altered or reinstated within fourteen days of notice in writing by the council (*c*). And if any drain is found to be in bad order or to require cleansing, alteration or filling up, the council must serve a notice on the owner or occupier requiring him to do the necessary works and if the notice is not complied with the council may execute the works, and recover the expenses from the owner or occupier or recover a penalty not exceeding £5 and a further sum not exceeding 40s. for every day during which the offence continues (*d*). Several legal decisions on the provisions in force in London have been referred to in the previous portions of this article, see especially pp. 93-95, 97, 101, and 103.

In the City of London, sewers and drains, other than the main sewers, are regulated by the City of London Sewers Acts, 1848 and 1851. Those Acts contain no definition of "drain"; but a distinction is drawn between public sewers and drains and private sewers and drains. Sects. 62, 64 of the Act of 1848 have been repealed by sect. 5 of the City of London (Various Powers) Act, 1933 (*e*), and the construction of drains for houses within the City which are newly built or rebuilt is now regulated by that section.

By sect. 123 of the Thames Conservancy Act, 1932 (*f*), it is an offence for any person to open into the Thames or any tributary thereof any drain whereby any sewage or other offensive or injurious matter may pass into the river or such tributary. [205]

(*u*) Metropolis Management Act, 1855, s. 82; 11 Statutes 902. These provisions have been expressly extended to disused drains by the L.C.C. (General Powers) Act, 1928, s. 19; 11 Statutes 1407.

(*a*) P.H. (London) Act, 1891, s. 40; 11 Statutes 1050.

(*b*) Metropolis Management Act, 1855, s. 84; 11 Statutes 903.

(*c*) *Ibid.*, s. 83; 11 Statutes 902.

(*d*) *Ibid.*, s. 85; Metropolis Management Amendment Act, 1862, s. 64; 11 Statutes 903, 982.

(*e*) 26 Statutes 590.

(*f*) 22 & 23 Geo. 5, c. xxxvii.

# DRAINS, CONNECTION OF, WITH SEWERS

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*See also titles :*

BUILDING BYE-LAWS ;  
DRAIN ;  
SEWAGE DISPOSAL ;  
SEWERAGE AUTHORITIES ;  
SEWERS AND DRAINS ;  
SEWERS, CONSTRUCTION OF ;

SEWERS, MAINTENANCE OF ;  
SEWERS, PROTECTION OF ;  
SEWERS, VESTING OF ;  
STORM WATER DRAINAGE ;  
TRADE EFFLUENTS.

[NOTE.—The local authorities under the enactments referred to in this title are the councils of boroughs, urban districts and rural districts, and the expression "the council" as used in this title covers all these councils.]

## RIGHTS OF OWNERS AND OCCUPIERS

The statutory provisions relating to the connection of drains with sewers are contained, in the main, in sects. 21 and 22 of the P.H.A., 1875, as supplemented by the adoptive provisions of sect. 18 of the P.H.A. Amendment Act, 1890, and sect. 38 of the P.H.A., 1925 (a). [206]

**General Right.**—The council are bound under sect. 21 of the Act of 1875 (b), to allow the owner or occupier of premises within their borough or district to cause his drains to empty into their sewers on condition of his giving such notice (c) as may be required by them of his intention so to do, and of his complying with their regulations in respect of the mode in which the communications between drains and sewers are to be made, and subject to the control of any person who may be appointed by the council to superintend the making of such communications.

(a) 13 Statutes 634, 635, 830, 1132.

(b) *Ibid.*, 634.

(c) For a form of notice, see 12 Encyc. Forms, p. 320.

The regulations, so long as they are limited to the mode in which drains are to communicate with sewers are in the entire discretion of the council. They are not bye-laws, and do not require confirmation by the M. of H. (d), but councils often include in these regulations clauses which should be inserted in building bye-laws. Such clauses would not be enforceable.

In boroughs and districts where sect. 38 of the P.H.A. Amendment Act, 1907 (e), has been put in force by order of the M. of H., the council may require a drain to be opened for examination. The section provides that before a drain existing at the date the order came into force, and then not communicating with any sewer of the council, is made to communicate with any sewer of the council, they may require the drain to be laid open for examination; and no such communication is to be made until the surveyor certifies that the drain may be properly made to communicate with such sewer. [207]

**Extent of Right as against the Council.**—It is commonly asserted that under sect. 21 of the P.H.A., 1875, a householder has an absolute right to connect his drains with a sewer. This is so, provided the regulations made by the council as to the manner in which the connection is to be made, and the other conditions of the section, are complied with. The council must then deal with the sewage. Hence an injunction was refused to restrain a council from allowing new connections to be made with their sewers, although such connections would increase a nuisance caused by the discharge of sewage (f).

An owner or occupier of premises has not an absolute right to discharge faecal matter into any sewer of a council irrespective of its suitableness to receive faecal matter, or irrespective of the fact that it is made and used for rain or surface water only. The regulations of the council may define the particular sewer to which the communication may be made (g). Thus it has been held that an owner cannot, without the consent of the council, turn slop and scullery water into a surface water sewer vested in them (h), or solid sewage matter from his water-closets into a surface and slop-water sewer (i). [208]

**Extent of Right as against Owners and the Public.**—Sect. 21 of the P.H.A., 1875, *ante*, does not authorise either an individual or the council to trespass on intervening land belonging to another owner for the purposes of connecting a drain with a sewer (k). Nor does it justify an owner in breaking up the footway of a public street for the purpose of putting an inspection chamber in a drain already connected with a

(d) See Act of 1875, s. 188; 13 Statutes 707. Some model regulations will be found in 12 Encyc. 321.

(e) 13 Statutes 924.

(f) *Brown v. Dunstable Corpns.*, [1899] 2 Ch. 378; 41 Digest 42, 306, following *Ainley v. Kirkheaton Local Board* (1891), 60 L. J. (Ch.) 734; 41 Digest 42, 305.

(g) *Wilkinson v. Llandaff and Dinas Powis R.D.C.*, [1903] 2 Ch. 695, C. A., per STIRLING, L.J., at p. 703; 41 Digest 7, 40.

(h) *Kinson Pottery Co., Ltd. v. Poole Corpns.*, [1899] 2 Q. B. 41; 41 Digest 11, 75.

(i) *Graham v. Wroughton*, [1901] 2 Ch. 451; 41 Digest 48, 312.

(k) *Wood v. Ealing Tenants, Ltd.*, [1907] 2 K. B. 390; 41 Digest 44, 319. That case was distinguished in *Grant v. Derwent*, [1928] Ch. 902; Digest (Supp.). This latter case went to the C. of A., [1929] 1 Ch. 390; Digest (Supp.), and the appeal was dismissed on the ground that the owner of land in which a drain had been laid by the council under s. 18 of the P.H.A. Amendment Act, 1890, cannot bring an action for trespass against the person at whose request the drain was laid. But see now P.H.A., 1925, s. 37; 13 Statutes 1131 (adoptive).

sewer, though probably he could put in such a chamber when the drain was made (l). [209]

**Extent of User.**—A difficult question arises as to character of the sewage which can be discharged into a drain, the connection of which with a sewer has been allowed by the council under sect. 21 of the P.H.A., 1875. That section gives the owner or occupier a right to cause his drains to empty into the sewers of the council, but does not refer to trade effluents from factories. On the other hand sect. 7 of the Rivers Pollution Prevention Act, 1876 (m), requires councils to give facilities for enabling manufacturers to carry the liquids proceeding from their factories or manufacturing processes into the sewers. But this duty is subject to the two safeguards in the proviso to the section, viz. (1) that they are not bound to receive liquids which would prejudicially affect the sewers, or the disposal of the sewage, or which would from their temperature or otherwise be injurious in a sanitary point of view; and (2) that facilities need not be given where the sewers are only sufficient for the requirements of the borough or district, or where the facilities would interfere with the order of a court respecting the sewage of the council.

In *Peebles v. Oswaldtwistle U.D.C.* (n), CHARLES, J., considered that sect. 21 of the P.H.A., 1875, allowed an owner or occupier to pass into a drain, not only ordinary sewage, but liquids of all kinds, including those from manufacturing processes. This judgment was later reversed on other grounds, and in *Brook v. Meltham U.D.C.* (o), the Lords Justices disapproved of the decision of CHARLES, J., in the *Oswaldtwistle Case*; see *per BUCKLEY, L.J.*, at p. 793. [210]

In a later case (p), it was held that where the owners of buildings have acquired a right to discharge drainage into a public sewer through a connection lawfully made, that right extends to the discharge of trade and manufacturing effluents, and the provisions of sect. 7 of the Rivers Pollution Prevention Act, 1876 (q), relating to the admission of trade effluents into the sewers of the local authority, do not justify the council in cutting off the connection with their sewer, even though it is shown that the discharge of the trade effluent prejudicially affects the disposal of the sewage matter conveyed through the sewer.

In 1903 it was the view of the Law Officers of the Crown that this latter section is the only one under which a manufacturer can claim to drain his trade effluents into an existing sewer, sect. 21 of the P.H.A., 1875, in their opinion, having no application to trade effluents (r). The law is therefore in a state of some confusion, although the opinion of the Law Officers has much to recommend it.

No prescriptive right to discharge into a council's sewers is acquired where such discharge has been secret, and unknown and unsuspected by the council or their predecessors (s).

A right to connect having once been exercised with the sanction of

(l) *A.-G. v. Ashby* (1907), 97 L. T. 479; 26 Digest 326, 590.

(m) 20 Statutes 319.

(n) [1897] 1 Q. B. 384; 41 Digest 19, 148.

(o) [1908] 2 K. B. 780; 41 Digest 10, 70.

(p) *Eastwood Bros., Ltd. v. Honley U.D.C.*, [1900] 1 Ch. 781; affirmed on appeal on other grounds, [1901] 1 Ch. 645; 41 Digest 43, 311.

(q) 20 Statutes 319.

(r) See p. 86 of Lumley's Public Health, 10th ed.

(s) *Liverpool Corp. v. H. Coghill & Son, Ltd.*, [1918] 1 Ch. 307; 19 Digest 69, 402.

the council, cannot later be interfered with by them (*t*). It is not necessary that such sanction should be express; it may be implied by mere acquiescence, as by standing by and allowing expense to be incurred (*u*). [211]

**Effect of Non-compliance with sect. 21 of P.H.A., 1875.**—Any person causing a drain to empty into a sewer of a council without complying with the provisions of this section is liable to a penalty not exceeding £20, and the council may close any communication between a drain and sewer made in contravention of the section, and may recover in a summary manner from the person so offending any expenses incurred by them under the section.

A person who, without complying with the conditions of the section, drains sewage matter into a sewer, whence it is discharged on to the land of another, is liable for the nuisance thereby caused (*a*). [212]

**Connections Effected by the Council.**—Where Part III. of the P.H.A. Amendment Act, 1890, has been adopted, and the owner or occupier of any premises is entitled to cause any sewer or drain from those premises to communicate with any sewer of the council, they are bound, if requested to do so by the owner or occupier, and upon the cost thereof being paid to them in advance, themselves to make the communication and to execute all works necessary for that purpose (*b*).

The cost of making such communication (including all incidental costs) is to be estimated by the surveyor of the council; but in case the owner or occupier of the premises, as the case may be, is dissatisfied with such estimate, he may, if the estimate is under £50, apply to a court of summary jurisdiction to fix the amount to be paid for such costs, and, if the estimate is over £50, he may have the same determined by arbitration in manner provided by the P.H.As. (*c*).

The council may agree with the owner of any premises that any sewer or drain which the owner is required, or desires, to make, alter, or enlarge, shall be made, altered, or enlarged by the council (*d*).

Where sect. 38 of the P.H.A., 1925 (*e*), has been adopted, sect. 18 of the Act of 1890 is repealed, and instead it is provided that where notice is given to the council under sect. 21 of the Act of 1875, *ante*, by an owner or occupier of premises of his intention to connect his drains with the council's sewers, the council shall be entitled themselves to make the connection. Before the work is executed the estimated cost must be paid, or security given therefor. It is further provided that the council, by agreement with the owner or occupier of any premises, may make, alter or enlarge any drain or sewer, or effect any

(*t*) *Clegg v. Castleford Local Board*, [1874] W. N. 229; *A.-G. v. Dorking Union* (1882), 20 Ch. D. 595; 41 Digest 42, 308; *Ogilvie v. Blything Union Rural Sanitary Authority* (1891), 65 L. T. 338, affirmed (1892), 67 L. T. 18; 41 Digest 43, 310; *A.-G. v. Clerkenwell Vestry*, [1891] 3 Ch. 527; 41 Digest 42, 304; *Brown v. Dunstable Corpns.*, [1899] 2 Ch. 378; 63 J. P. 519; 41 Digest 42, 306; *Harrington (Earl) v. Derby Corpns.*, [1905] 1 Ch. 205; 41 Digest 34, 256.

(*u*) *Clegg v. Castleford Local Board*, *ante*.

(*a*) *Graham v. Wroughton*, [1901] 2 Ch. 451; 41 Digest 43, 312. See also *Kinson Pottery Co., Ltd. v. Poole Corpns.*, [1899] 2 Q. B. 41; 41 Digest 11, 75; and *Seal v. Merthyr Tydfil U.D.C.*, [1897] 2 Q. B. 543; 41 Digest 4, 12.

(*b*) S. 18 (1); 18 Statutes 830. A form of request will be found in 12 Encyc. Forms 351.

(*c*) S. 18 (2); 18 Statutes 831.

(*d*) S. 18 (3).

(*e*) 18 Statutes 1132.

connection between a drain and a sewer, which the owner or occupier is required or desires to make, alter, enlarge or effect. Sect. 38 of the Act of 1925 is a more stringent provision than sect. 18 of the Act of 1890. The work in connecting a drain with a sewer is skilled work, and it is important that no opportunity for faulty workmanship should be allowed. Sect. 38, therefore, gives the council a monopoly in connecting drains with sewers, but this monopoly does not extend to the laying of the drain, although the council may agree to lay or alter a drain under sub-sect. (5) of the section. Sect. 18 of the Act of 1890 also did not indicate the course to be followed where the actual cost of the work was less than or exceeded the estimated cost, but sect. 38 (3), (4) of the Act of 1925 (*f*), now provide for the repayment of any balance in the council's hands, and the recovery of any excess.

Sect. 37 of the P.H.A., 1925 (*g*), also an adoptive provision, empowers the authority to lay drains in private streets, by agreement with, and at the expense of, any person owning or occupying premises abutting on such street.

The above provisions may be adopted by rural district councils as well as by borough and urban district councils (*h*). [213]

**Prohibition of User for Certain Purposes.**—Drains connected with the sewers of a council must not be used for any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any such sewer or drain may be injured (*i*). Nor may any person turn or permit to enter into any sewer of a council or drain communicating therewith, any chemical refuse, or any waste steam, condensing water, heated water, or other liquid (being of a higher temperature than 110° F.), which either alone or in combination with the sewage, causes a nuisance or is dangerous or injurious to health (*k*). [214]

#### RIGHT OF OWNERS, ETC., OUTSIDE BOROUGH OR DISTRICT

Under sect. 22 of the P.H.A., 1875 (*l*), an owner or occupier of any premises outside a borough or district may cause any sewer or drain from his premises to communicate with any sewer of the council of that borough or district on such terms and conditions as may be agreed between the owner or occupier and the council, or as, in the case of dispute, may be settled, at the option of the owner or occupier, by a court of summary jurisdiction or by arbitration in manner provided by the Act of 1875. [215]

**Effect of Agreement.**—A council entering into an agreement under sect. 48 of the P.H.A., 1848, which is almost identical with sect. 22 of the Act of 1875, *ante*, were held to have had power to bind their suc-

(*f*) 13 Statutes 1132.

(*g*) *Ibid.*, 1131.

(*h*) P.H.A. Amendment Act, 1890, ss. 3 (2), 50; P.H.A., 1925, ss. 3, 4; 13 Statutes 825, 842, 1116.

(*i*) P.H.A. Amendment Act, 1890, s. 16 (13 Statutes 830), which applies where Part III. is adopted by a borough or district council.

(*k*) *Ibid.*, s. 17, when adopted by the council. See also s. 41 of the P.H.A., 1925 (which may be adopted by any council). Under that section it is an offence wilfully or negligently to empty or permit to enter into any sewer, or drain communicating with a sewer, any petroleum spirit or carbide of calcium; 13 Statutes 1133.

(*l*) 13 Statutes 635. A form of agreement will be found in 12 Encyc. Forms 323.

cessors, not only as to the houses in existence at the time when the agreement was made, but also as to the sewage of houses not then in existence ; and it was decided that, though the borough council were trustees for the ratepayers, as they had exercised their discretion, and had not made an improvident bargain at the time when it was made, the agreement was none the less valid because by subsequent events it had turned out to be a bad bargain for them. So that when after such an agreement, the council were prevented by a new enactment from continuing to pass the sewage through the drain into the Thames, it was also held that the alteration of the law was no ground for setting the deed aside (*m*).

It has been decided that the vestry of a parish in London could not enter into a binding agreement to receive sewage into their sewers from a district outside London (*n*), and it is doubtful whether sect. 22 of the Act of 1875, *ante*, authorises the council of a borough or district outside London to receive sewage from houses within London. [216]

**Procedure for Settling Terms.**—The procedure for determining the question of terms where no agreement can be come to as to terms is either to apply to a court of summary jurisdiction to settle them or to proceed to arbitration under the Act of 1875. The owner or occupier alone has the choice of these two courses.

It is probable that under sect. 22 of the Act of 1875 the court of summary jurisdiction may determine the dispute, although the amount in dispute may exceed £20, which is the limit of their jurisdiction under the general provisions of the Act of 1875 relating to arbitration (*o*).

In *Faber v. Gosworth U.D.C.* (*p*), the plaintiffs claimed a declaration that they were entitled, subject to the terms and conditions of sect. 22 of the Act of 1875, to connect their proposed sewer or sewers with the defendants' sewer. The plaintiffs were about to develop a building estate in a district which was adjacent to the defendants' district, who had vested in them a sewer which the plaintiff desired to use when these houses had been built. The defendants had objected that the connection of such a large series of sewers as was contemplated was altogether outside the scope of sect. 22, and could not be forced upon them without their consent. The Court refused to exercise its discretion in favour of the plaintiffs by making the declaration asked for, on the grounds that no part of the works had been executed, and that such a large system of sewers as the plaintiffs contemplated might require the defendants to construct new sewers, and the order asked for might have the effect of hampering any arbitrator or court of summary jurisdiction in dealing with the case under the section. [217]

**Extent of Right.**—A council have no power by entering into an agreement with an adjoining council under sect. 28 of the Act of 1875 (*q*), relating to agreements for the communication of sewers with sewers of an adjoining council, to deprive individuals of their rights under sect. 22 (*r*). [218]

(*m*) *New Windsor Corp. v. Stovell* (1884), 27 Ch. D. 665 ; 41 Digest 32, 237.

(*n*) See *St. Mary, Islington, Vestry v. Hornsey U.D.C.*, [1900] 1 Ch. 695 ; 41 Digest 31, 233.

(*o*) P.H.A., 1875, s. 181 ; 13 Statutes 704.

(*p*) (1903), 67 J. P. 197 ; 30 Digest 143, 195.

(*q*) 18 Statutes 638.

(*r*) *Newington Local Board v. Cottingham Local Board* (1879), 12 Ch. D. 725 ; 41 Digest 32, 235.

**Extent of User.**—The extent of user will be limited by the terms and conditions agreed upon. For an illustration, see *Metropolitan Board of Works v. London and North Western Rail. Co. (s)*. There the plaintiffs allowed four old cottages belonging to the defendants, on land just outside London and bounded by the Stamford Brook, to continue to drain through an 18-inch brick drain into Stamford Brook. The brook was subsequently covered in, and converted into a main sewer, at the request of the defendants, and the plaintiffs then made a drain-eye in the newly covered-in sewer as a communication for the 18-inch drain. The defendants afterwards built other cottages on the same land, and claimed the right to use the 18-inch drain for the purpose of draining the new cottages through the communication into the sewer. It was held that as the defendants had not proved any prescriptive right to use the 18-inch drain for the sewage of the new cottages, nor obtained the written consent of the plaintiffs for that purpose under sect. 61 of the Metropolis Management Amendment Act, 1862 (*t*), they were not entitled to use the 18-inch drain for any other purposes than those for which they used it when the brook was covered in. JAMES, L.J., said “on the facts it is quite clear there were no such prescriptive rights as have been alleged. If a man has an artificial drain or sewer by which he drains anything, either water or sewage, into his neighbour’s land, he cannot use that drain so as to drain another close or another house. It seems to me impossible to suppose that there is anything in the English law to say that a man has the right to pour in as much sewage matter as can come from anywhere, limited only by the size of the particular drain” (*u*). [219]

**Effect of Communication without Consent.**—If a communication were made under sect. 22 without the consent of the council so as to cause damage, an action for trespass would probably lie; and an injunction would probably be granted even if there were no damage beyond the fact that the communication had been made without compliance with the conditions of the council. [220]

#### ALTERATION, CLOSING, ETC., OF DRAINS OR SEWERS

##### **Alteration of Drains for Adapting Drainage to the General System (a).**

—Where any house within a borough or district has a drain communicating with any sewer, which drain, though sufficient for the effectual drainage of the house, is not adapted to the general sewerage system of the borough or district, or is in the opinion of the council otherwise objectionable, the council may, on condition of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose. The expenses of those works, and of the construction of any drain or drains so provided by them, are to be deemed to be expenses properly incurred by them in the execution of the P.H.A., 1875. This provision applies to houses built before the council introduced their existing system of sewers; otherwise the proper communication would have

(s) (1881), 17 Ch. D. 246; 41 Digest 44, 321.

(t) 11 Statutes 980.

(u) At p. 249.

(a) P.H.A., 1875, s. 24; 13 Statutes 636. A form of notice of intention to proceed under this section is given in 12 Encyc. Forms, 533, title PUBLIC HEALTH.

been made. A council cannot escape liability under this section by affecting to exercise their powers against an owner under sect. 23 of the Act (b) relating to the enforcement by the council of the drainage of houses without "effectual drainage" (c).

The provision of substituted drains is a condition precedent to the exercise of their powers by the council. [221]

**Power of Council to Alter Sewers.**—The council may from time to time enlarge, lessen, alter the course of, cover in or otherwise improve any sewer belonging to them, and may discontinue, close up or destroy any such sewer that has become unnecessary, on condition of providing a sewer as effectual for the use of any person who thus may be deprived of the lawful use of a sewer: but the discontinuance, closing up or destruction of any sewer must be so done as not to create a nuisance (d).

The words "alter the course of, cover in," in the above provision, have been held to justify the piping of an open watercourse which the court held to be a "sewer" (e). [222]

**Condition Precedent.**—The alteration or discontinuance can only be effected on the terms that provision as effectual as before is made for any person whose lawful user of the original sewer is interfered with (f). If the council have ever accepted the original sewer as a satisfactory one for the street, they cannot throw the burden of constructing the new one on the various frontagers (g). [223]

**Consequent Alterations of Drains.**—Any new drains or any work connected with drains which is rendered necessary, not by the insufficiency of the drains, but by the alteration effected in a sewer, must be provided or done at the expense of the council, and not at the expense of the owner or occupier whose drain is so altered (h). [224]

**London.**—The statutory provisions relating to the connection of drains with sewers in the administrative County of London are contained in the Metropolis Management Acts. By sect. 83 of the Metropolis Management Act, 1855 (i), no person may break into any sewer, and by sect. 61 of the Metropolis Management Amendment Act, 1862 (k), no person may make or branch any sewer or drain or make any opening into any sewer vested in the L.C.C. or in any metropolitan borough council, without the consent of the council. By sects. 4 & 5 of the Metropolis Management Amendment Act, 1890 (l), such consent must be in writing and the work must be in accordance with a plan approved by the council, and penalties are prescribed for failure to

(b) 13 Statutes 635.

(c) *St. Martin-in-the-Fields Vestry v. Ward*, [1897] 1 Q. B. 40; 41 Digest 26, 204.

(d) P.H.A., 1875, s. 18; 13 Statutes 634. A form of notice of intention to alter or discontinue a sewer will be found in 12 Encyc. Forms 319.

(e) *Wheatcroft v. Matlock Local Board* (1885), 52 L. T. 356; 41 Digest 7, 46.

(f) See *A.-G. v. Dorking Union* (1882), 20 Ch. D. 595; 41 Digest 42, 308; and *A.-G. v. Acton Local Board* (1882), 22 Ch. D. 221; 41 Digest 19, 150.

(g) See *Bonella v. Twickenham Local Board* (1887), 20 Q. B. D. 63, C. A.; 41 Digest 19, 151.

(h) *St. Marylebone Vestry v. Viret* (1865), 19 C. B. (N. S.) 424; 41 Digest 26, 202; and *St. Martin-in-the-Fields Vestry v. Ward*, *supra*; and cf. s. 24 of the P.H.A., 1875; 13 Statutes 636.

(i) 11 Statutes 902.

(k) *Ibid.*, 980.

(l) *Ibid.*, 1015.

comply with these conditions. The council cannot require the costs of supervision to be paid as a condition of its consent (*m*).

With such consent any owner or occupier may at his own expense drain into any sewer vested in the council, or authorised to be made by it, in such manner as the council directs, and when a connection is properly made it cannot be cut off (*n*).

Penalties up to £50 are prescribed for making a connection without consent, and furthermore the connection may be cut off by the council, or the council may by written notice require the owner of the premises to carry out the work in the required manner, or in default may execute the work necessary for making the drain conform to its regulations and directions and recover the cost from the person making the drain or causing it to be made or from the owner or occupier of the premises (*o*). If more than one owner is responsible the expenses must be apportioned, and an owner who pays such expenses may recover them summarily from the person who made the drain or branched it into the sewer.

Whenever it is necessary to open any part of the pavement or any street or public place in order to connect a private drain with a sewer vested in the county council or a metropolitan borough council, the borough council may, if they think fit, make so much of such drain as will be under or in any public place or street, and recover the expenses from the owner of the property to which the private drain belongs (*p*). A borough council may also contract with the owners or occupiers of property that any drains required to be made or altered by such owners or occupiers shall be made or altered by the council, the cost price as certified by the surveyor of the council to be paid by such owner or occupier (*q*).

The Metropolis Management Amendment Act, 1890, applies to the City of London as regards sewers vested in the L.C.C. (*ibid.*, sect. 8). [225]

See also *ante* pp. 112–114 for mention of some cases decided on the law relating to London.

(*m*) *R. v. Greenwich Board of Works* (1884), Cab. & El. 236.

(*n*) *A.-G. v. Clerkenwell Vestry*, [1891] 3 Ch. 527 ; 41 Digest 45, 325.

(*o*) Metropolis Management Act, 1855, s. 83 ; Metropolis Management Amendment Act, 1862, s. 61 ; Metropolis Management Amendment Act, 1890, ss. 4, 5 ; 11 Statutes 902, 980, 1015.

(*p*) Metropolis Management Act, 1855, s. 78 ; 11 Statutes 901.

(*q*) *Ibid.*, s. 79 ; 11 Statutes 901.

## DRIED MILK

*See* CONDENSED MILK.

## DRINKING FOUNTAINS AND TROUGHES

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*See also titles :*

ACCIDENTS ;  
AMENITIES ;  
NEGLIGENCE ;

| NUISANCES ;  
WATER SUPPLY.

**General.**—Though the provision of drinking fountains and troughs by local authorities was not actually mentioned by statute until the passing of the P.H.A., 1925, amenities of this kind have commonly been acquired and maintained in other ways. The chief methods, especially in towns, have been by gift, and often supplemented by a clause in a local Act authorising the erection on highways of fountains or troughs. By sect. 64 of the P.H.A., 1875 (*a*), such gifts would be included among the “works used for the gratuitous supply of water to the inhabitants” vested in the council by that section. By sect. 8 (1) (e) (h) (i) and (k) of the L.G.A., 1894 (*b*), parish councils were empowered to utilise any well, spring or stream within their parish and provide facilities for obtaining water from it, to accept and hold any gifts, to execute any works necessary and to contribute towards the expenses of works or maintenance. Both drinking fountains and troughs seem to be covered by these provisions. Sub-sect. 8 (1) (h), which referred to gifts, was repealed by the L.G.A., 1933 (*c*), and replaced by sect. 268 (*d*), which gave to all local authorities power to accept, hold and administer gifts of property, and where the purposes of the gift were purposes for which the council were empowered to spend money raised from a rate to defray expenditure incurred in the exercise of the power out of money so raised. Sect. 64 of the P.H.A., 1875, mentioned above would bring the maintenance of drinking fountains and troughs within this section.

By sect. 42 of the P.H.A. Amendment Act, 1890 (*e*), the council of any borough or urban district, if they had adopted Part III. of that Act, were allowed to authorise the erection of any statue or monument in any street or public place within their borough or district, and to maintain it or any other statue or monument erected before such adoption. Drinking fountains and troughs might be the form of such a statue or monument. Sect. 42 was extended to all rural districts

(*a*) 13 Statutes 652.

(*b*) 10 Statutes 780.

(*c*) S. 307, and Sched. XI., Pt. IV.; 26 Statutes 469, 519.

(*d*) 26 Statutes 449.

(*e*) 13 Statutes 840.

by the Rural District Councils (Urban Powers) Order, 1931 (*f*), but the consent of the county council was required to an exercise by such a council of the powers of the section (*g*). [226]

**Provision under the P.H.A., 1925.**—By sect. 14 of the P.H.A., 1925 (*h*), if adopted, a local authority, which for purposes of this section includes borough, urban and rural district councils (*i*), and any person with their consent, may erect and maintain drinking fountains for the use of the public and troughs for watering horses and cattle, in any proper and convenient situation in any street or public place. Conditions may be imposed by the council when giving consent. By sect. 16 of the same Act (*k*), the consent of the county council must be obtained where the fountain or trough is to be constructed in any street which is a county road maintained by a county council. [227]

**Liability of Local Authorities.**—The liability of local authorities for nuisance or negligence in regard to the use or maintenance of fountains or troughs is the same as for any other works in their possession or control. (See titles ACCIDENTS, NEGLIGENCE, NUISANCES.) In both the cases which have come before the courts on the subject, the fountain was a gift to a town.

In *O'Keefe v. Edinburgh Corporation* (*l*), it was decided that the corporation was not liable for an injury sustained by a person slipping on ice formed by the overflow of water from the fountain, where there was no defect in the fountain; and in *McLoughlin v. Warrington Corporation* (*m*) where there was a conflict of evidence as to the condition of the fountain, that the corporation was liable for injury to a boy who was hurt by a stone coping which was dislodged, even though he was using the fountain for a wrong purpose in climbing it to watch a procession.

Water may be supplied to a drinking fountain or trough under the Waterworks Clauses Acts (see under title WATER SUPPLY). It was held in *Hildreth v. Adamson* (*n*) that a trough provided for the use of animals at set times on market days came within sect. 37 of the Waterworks Clauses Act, 1847 (*o*), which imposed on water undertakers the duty of supplying with water any public pumps that might be established for the free use of the inhabitants, and that the use of such water might be dedicated to the use of the public for a limited purpose in the same way as the use of a highway. [228]

**London.**—In London statutory provision was made with respect to drinking fountains in the P.H. (London) Act, 1891. Under sect. 51 (1) of that Act (*p*), all public cisterns, fountains, wells and works existing on the date of the coming into force of that Act used for the gratuitous supply of water to the inhabitants of the district of any sanitary authority, and not vested in any person or authority other than the sanitary authority, became vested in and under the control of the sanitary authority. Under sect. 51 (2) of the same Act the sanitary

(*f*) S.R. & O., 1931, No. 580; 24 Statutes 262.

(*g*) *Ibid.*, s. 3 (b), Schedule, Part II.

(*h*) 13 Statutes 1119.

(*i*) Ss. 3, 4; 13 Statutes 1116.

(*k*) 13 Statutes 1119.

(*l*) [1911] S.C. 18; 26 Digest 389, (*r*).

(*m*) [1910], 75 J.P. 57; 36 Digest 51, 318.

(*n*) (1860), 8 C.B. (N.S.) 587; 43 Digest 1082, 168.

(*p*) 11 Statutes 1057.

(*o*) 20 Statutes 199.

authority (q) has power to maintain such cisterns, fountains, etc., and to supply them with pure water, and also to provide and maintain drinking fountains in such convenient situations as it deems proper. Under sect. 51 (3) of the Act any person doing wilful damage to any such fountain is liable, in addition to any other penalty, to pay the cost of repair or reinstatement.

Under sect. 35 of the L.C.C. (General Powers) Act, 1928 (r), a metropolitan borough council after consultation with the Commissioner of Police of the Metropolis and any person (with the consent of the borough council and subject to such conditions as they may impose) after like consultation may in proper and convenient situations in any street or public place vested in, or repairable by, the borough council, provide drinking fountains for the use of the public and troughs for watering horses and cattle. [229]

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(g) The sanitary authority is now, in the City of London, the Common Council, and elsewhere in the administrative County of London the metropolitan borough council.

(r) 11 Statutes 1413.

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## DROWNED PERSONS, BURIAL OF

*See CORPSES.*

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## DRUGS

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For administration of Food and Drugs (Adulteration) Act, 1928, see titles ANALYST, FOOD AND DRUGS, FOOD AND DRUGS AUTHORITIES, INSPECTORS OF FOOD AND DRUGS, SAMPLING OF FOOD AND DRUGS. For food preservatives, see title PRESERVATIVES. For poisons and dangerous drugs, see title POISONS.

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**Adulteration.**—The sale of drugs is subject in much the same way as the sale of food to the requirements of the Food and Drugs (Adulteration) Act, 1928 (a). Drugs, like foods, must be of the nature, substance or quality demanded by a purchaser (b), and compounded drugs must be composed of the ingredients or material demanded (c). It is also an offence to add any ingredient or material to a drug so as to affect

injuriously its quality or potency with the intent that the drug shall be sold in that state, or to sell a drug so mixed (*d*).

For the purpose of the Act of 1928, the term "drug" includes medicine for internal or external use (*e*). But difficulties are apt to arise with respect to substances capable of being used medicinally or otherwise, such as brandy, borax, sulphur and certain acids. An article is not necessarily a drug because it is described in the British Pharmacopœia (*f*), and "arsenical soap" containing no arsenic may not be a drug (*g*). It has been held that sherry sold by a grocer should comply with the requirements of the British Pharmacopœia (*h*).  
[230]

**British Pharmacopœia as a Standard.**—No enactment declares that the standards of the British Pharmacopœia shall be binding under the Food and Drugs (Adulteration) Act, 1928; but several High Court decisions on this point have been given. Briefly, the effect of these is that when any medicine in the British Pharmacopœia is asked for, especially in the exact terms of the description given therein, it is usually necessary that the purchaser should be supplied with the article prepared according to the formula there given, unless some good reason to the contrary can be shown (*i*). An adequate reason may be that the description in the Pharmacopœia is technically incorrect, or that more than one kind or quality of article is known in commerce by the description given (*k*). This is the case with respect to some drugs, but the majority of drugs and compounds described in the British Pharmacopœia are substances with respect to which no question can arise of any other variety or quality than that described being known in commerce, and in such cases it is clearly an offence to sell under the official name any drug other than that which is described in the Pharmacopœia.

But it is to be remembered that the Pharmacopœia may, in addition to giving a formula for the manufacture of a compound, proceed to state what chemical tests shall be satisfied by the finished product. And in some instances it has been found that these tests cannot be satisfied if the official formula be followed in preparing the compound. It may happen that as the result of evaporation or chemical change a drug at the time of sale may not have the same constitution as when it was made (*l*). In cases of this type, also, it is necessary to consider how far the "standards" of the British Pharmacopœia can be regarded as valid.

The last British Pharmacopœia was published in 1932; and if the letters "B.P." are appended to the name of a medicine, the description or formula given in that book is definitely indicated. The previous issue was in 1914, and many preparations and substances which were

(*d*) S. 1; 8 Statutes 884.

(*e*) S. 34, *ibid.*, 905.

(*f*) *Fowle v. Foreole* (1896), 75 L. T. 514; 25 Digest 70, 1; where bees-wax was held not to be a drug.

(*g*) *Houghton v. Taplin* (1897), 13 T. L. R. 386; 25 Digest 70, 2.

(*h*) *Grant v. Harriman* (1932), unreported. But sherry is not described in the new "British Pharmacopœia" issued in 1932.

(*i*) *White v. Bywater* (1887), 19 Q. B. D. 582; 25 Digest 90, 160.

(*k*) *Boots Cash Chemists (Southern), Ltd. v. Corweling* (1903), 88 L. T. 539; 25 Digest 90, 158; and *Dickins v. Randerson*, [1901] 1 K. B. 437; 25 Digest 90, 159.

(*l*) *Hudson v. Bridge* (1903), 88 L. T. 550; 25 Digest 90, 161.

then official have been omitted from the latest edition. It must not be forgotten, in connection with the requirement that compounded drugs must be composed of ingredients in accordance with the demand of the purchaser (*m*), that there are for compounded medicines various semi-official books of formulæ recognised generally by medical practitioners and pharmacists. The letters "B.P.C." in medical prescriptions are universally understood to refer to the British Pharmaceutical Codex, published by the Pharmaceutical Society of Great Britain; and, similarly the letters "N.I.F." refer to the National Insurance Formulary, published under the auspices of the British Medical Association and the Retail Pharmacists' Union. The dispensing of prescriptions for insured persons under the National Health Insurance Acts is now tested by Insurance Committees under a special scheme approved by the M. of H., but it is still open to Food and Drugs Authorities to use sect. 2 or sect. 3 of the Act of 1928 (*n*), in respect of dispensed medicines if they find it practicable to do so, though it is doubtful who is the purchaser of medicine dispensed for an insured person from the prescription of a "panel doctor." [281]

**Sampling of Drugs.**—In a circular (*o*) issued to Food and Drugs Authorities, the M. of H. has advised that when a sample of a prescribed medicine is taken under the Food and Drugs (Adulteration) Act, 1928, the height of the contents in the bottle supplied should be marked by the sampling officer in the vendor's presence prior to the division of the sample. The bottle so marked should be sent to the public analyst, so that he can determine the total quantity of the medicine supplied.

There is no provision under which sampling officers may procure samples of drugs in course of delivery to a purchaser. [282]

**Patent and Proprietary Medicines.**—Few medicinal preparations are now made under a patent in force, and the term "patent medicine" is usually understood by the public to include the numerous proprietary medicines, often of secret composition, which are found in commerce, as well as medicines protected by letters patent. Patent and proprietary medicines are specifically exempted from sect. 2 of the Act of 1928 by the proviso in sub-sect. 2 (b) (*p*). Proprietary, as well as patent, medicines recommended for the alleviation or cure of disease are required to be sold with a Revenue stamp, and dealers in such articles have to take out an annual licence, obtainable from Revenue Officers. The Medicines Stamp Acts, 1802, 1803 and 1812 (*q*), are enforced by the Commissioners of Customs and Excise. [283]

**Sale by Weight or Measure.**—In the Sale of Food (Weights and Measures) Act, 1926 (*r*), food means and includes every article used for food and drink by man, and any article which ordinarily enters into or is used in the composition or preparation of human food (*s*). Although some drugs may be used for food or drink by man, they are

(*m*) Act of 1928, s. 3; 8 Statutes 887.

(*n*) 8 Statutes 885, 887. These sections provide that no one shall sell to the prejudice of the purchaser articles of food or drugs not of the nature, quality or substance demanded or compounded drugs not composed of the ingredients demanded.

(*o*) Memo. 36, Foods, January, 1929.

(*p*) 8 Statutes 885.

(*q*) 16 Statutes 33, 39, 54. Especially the Acts of 1802 and 1803.

(*r*) 20 Statutes 419.

(*s*) *Ibid.*, s. 13; 20 Statutes 425.

apparently not within the purview of the Act of 1926, not only from the general intention of that Act, but also because the meaning of "food" is explicitly stated to be the same as in the Sale of Food and Drugs Act, 1899, now repealed, wherein drugs were declared not to be articles of food. If this submission be correct, local authorities are not concerned with the weight or measure of drugs supplied to purchasers.

**Poisons.**—Drugs are in the legal sense poisons if they are included in the Poisons List approved (or to be approved) by the Home Secretary on the advice of the Statutory Poisons Board under sect. 17 of the Pharmacy and Poisons Act, 1933 (*t*). The Home Secretary is empowered after consultation with or on the recommendation of the Poisons Board to make rules dealing with the manufacture, sale, storage, transport, labelling and compounding of poisons (*u*). The provisions of the Act and regulations, so far as they relate to medicinal drugs, are by sect. 25 (1) of the Act to be enforced by the Pharmaceutical Society of Great Britain (*a*). So far as they relate to industrial poisons (such as disinfectants and weed killers) or other poisonous substances not used for the treatment of human ailments, enforcement is, under sect. 25 (5) of the Act, to be undertaken by Food and Drugs Authorities (*b*). [234]

**Dangerous Drugs.**—Drugs in another class are known as "dangerous drugs" and may only be kept by persons who hold a licence from the Home Secretary under the Dangerous Drugs Acts, 1920 to 1932 (*c*). These drugs include, among others, many drugs of addiction, such as cocaine, heroin, Indian hemp, morphine, opium and their preparations (*d*). Stringent restrictions are imposed on their distribution, which are somewhat modified in their application to institutions such as hospitals and sanatoria maintained by local and other public authorities.

The administration of the Dangerous Drugs Acts is undertaken by the Home Secretary, and local authorities are not concerned with the enforcement of these Acts. [235]

**Therapeutic Substances.**—The manufacture for sale of certain therapeutic substances, especially vaccines, sera, toxins and anti-toxins, is subjected to special restrictions, a licence from the M. of H. being necessary (*e*). Local authorities have no powers or duties in this connection. [236]

(*t*) 26 Statutes 573. The Act is to be brought into force on such days as may be appointed by the Home Secretary. Ss. 1, 2, 4–6, 16, 17, 26 and Scheds. I., II. and part of III. were brought into operation by S.R. & O., 1933, No. 806, but the remainder of the Act is not in force. Meanwhile, the sale of poisons is still regulated by the Arsenic Act, 1851, the Pharmacy Act, 1868, and the Poisons and Pharmacy Act, 1908; 11 Statutes 662, 685, 735. The Poisons Board under the new Act has been constituted.

(*u*) *Ibid.*, s. 23; 26 Statutes 579. For these rules, see title POISONS.

(*a*) The address of the Society is 17 Bloomsbury Square, London, W.C.

(*b*) For these authorities, see s. 13 of Food and Drugs (Adulteration) Act, 1928; 8 Statutes 893, and title FOOD AND DRUGS AUTHORITIES.

(*c*) See 11 Statutes 756, 773, 781 and 25 Statutes 295.

(*d*) See the Dangerous Drugs (Consolidation) Regulations, 1928, S.R. & O., 1928, No. 981, and other regulations. These drugs are also poisons, and as such will presumably be subject to the provisions of the Pharmacy and Poisons Act, 1933; 26 Statutes 562.

(*e*) S. 2 of Therapeutic Substances Act, 1925; 11 Statutes 777. See also Therapeutic Substances Regulations, 1931; S.R. & O., 1931, No. 633.

**Imported Drugs.**—The Board of Trade have exempted (*f*) “uncompounded drugs from whatever source derived, which are sold for medicinal purposes,” from the operation of sect. 1 of the Merchandise Marks Act, 1926 (*g*), and imported drugs therefore do not require to be marked, when sold or exposed for sale, with an indication of origin. A marking order has, however, been made under the Act with respect to imported malt products (*h*). [237]

**Medicated Wines.**—Although in law there is no exemption in favour of medicated wines from the ordinary licensing and revenue requirements, the Commissioners of Customs and Excise do not in practice insist on a chemist taking out a licence for the sale of medicated wines, provided that (1) the wine is sufficiently medicated and incapable of being taken as a beverage, and (2) the labels show clearly that the liquor is intended for use as a medicine and not as a beverage. [238]

**London.**—The Food and Drugs (Adulteration) Act, 1928, applies to London, and for the purposes of that Act the Food and Drugs Authorities are, in the City of London, the Common Council, and in other parts of the administrative County of London, the metropolitan borough councils (*i*). [239]

(*f*) By the Merchandise Marks Exemption Direction (No. 2) Order, 1927 ; S.R. & O., No. 628.

(*g*) 19 Statutes 898.

(*h*) Merchandise Marks (Imported Goods) No. 5 Order, 1930 ; S.R. & O., 1930, No. 566. This order is enforceable by Food and Drugs Authorities ; see titles FOOD AND DRUGS AUTHORITIES and IMPORTED FOOD.

(*i*) Food and Drugs (Adulteration) Act, 1928, s. 13 ; 8 Statutes 893.

## DRUNKENNESS

*See OFFENSIVE BEHAVIOUR.*

## DUCHIES

*See HUNDREDS.*

## DUST, RECEPTACLES FOR

*See ASHPITS, REFUSE, SCAVENGING.*

## DUSTBINS

*See ASHPITS.*

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*See REFUSE.*

## DUTIES AND POWERS OF OFFICERS

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*See also titles dealing with specific officers and also the following titles :*

ACCIDENTS ; COMMON SEAL ; EMPLOYEES, RESPONSIBILITY FOR ACTS OF ;	MISFEASANCE AND NONFEASANCE ; PUBLIC AUTHORITIES PROTECTION ; STANDING ORDERS.
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With regard to any question arising on the principles of the general law of agency in respect of an officer's position as an agent of a local authority, reference should be made to Halsbury's Laws of England (2nd ed.), Vol. I., title " Agency."

### INTRODUCTION

Generally speaking, there is no specific line of demarcation which distinguishes the routine work of a local authority ordinarily performed by an officer without a direction being given by a committee from work which is performed in pursuance of a special resolution of a committee or of the council. The usual practice is for the council, by standing orders, to define the various duties which will be performed by committees and to delegate to those committees the power to carry out and perform that work. The committees, in turn, issue instructions to the appropriate departmental officers, either generally or specifically, as to the performance of the duties assigned to them by the committees.

In general, powers or duties are conferred or imposed by statute on the local authority, and in a few exceptional instances only on a particular officer, who is responsible for their discharge without reference to the council by whom he is appointed. Thus the registration officers and the returning officers at parliamentary and local elections and the Local Land Charges Registrar are statutory officers upon whom specific duties are imposed by statute (a). [240]

In a few instances, the P.H.A., 1875, authorises the M.O.H. or sanitary inspector to take action on his own responsibility, see e.g. sects. 116—119 of the Act (b) as to unsound food, and sect. 49 of the

(a) See ss. 11—16, 28—32 of the Representation of the People Act, 1918 ; 7 Statutes 555—558, 564—567; the Second Schedule to the L.G.A., 1933 ; 26 Statutes 474; and the Land Charges Act, 1925, s. 15; 15 Statutes 538; and the Local Land Charges Rules, 1934; S. R. & O., 1934, No. 285.

(b) 13 Statutes 672, 673.

Act (c) as to the removal of accumulations of manure, etc., in a borough or urban district. Again, the duty of taking samples of food or drugs and of submitting them for analysis is imposed upon any M.O.H., sanitary inspector, etc., acting under the direction of the local authority, as sampling officers by sects. 16, 17 of the Food and Drugs (Adulteration) Act, 1928 (d).

For additional examples, see *post*, pp. 128, 129. [241]

In some instances, the M. of H. is given power to prescribe the duties of officers by regulation or order. Thus under sect. 108 (1) of the L.G.A., 1933 (e), he may by regulations prescribe the duties to be performed by medical officers of health and sanitary inspectors (f). By sect. 10 (3) of the Poor Law Act, 1930 (g), the Minister may define the duties to be performed by poor law officers, and the duties of many of these officers are set out in great detail in Arts. 164—180 of the Public Assistance Order, 1930 (h). [242]

#### DUTIES OF OFFICERS

**Assignment by Statute.**—Part IV. of the L.G.A., 1933 (i), enumerates the officers to be appointed by county councils, borough councils, district councils and parish councils, and outlines their duties, but this outline is in the most general terms and is, in practice, extended by directions given by the council either by resolution or in standing orders. Sect. 120, however, imposes a definite duty on every officer of the council of a county, county borough, county district or rural parish to account for all money and property committed to his charge and for all his receipts and payments, and to deliver a list of the persons from or to whom money is due in connection with his office and in each case to shew the amount. It is left to the council to direct in what manner and at what times these duties must be performed, though the obligation ceases at the expiry of three months after the officer has ceased to hold his office. The same section imposes the duty on each of these officers of paying all money due from him to the treasurer of the council or otherwise as the council may direct. On default the officer may be ordered by a court of summary jurisdiction to remedy his default. [243]

The officers to be appointed by a county council are a clerk, county treasurer, county medical officer of health and county surveyor, and in addition, a county council must under sect. 105 (1) appoint such other officers as they think necessary for the proper discharge of their functions. The only reference in any detail to the duties of the clerk is that in sect. 101 requiring the clerk, when acting in relation to any business of the council and when acting under any enactment or statutory order relating to the deposit of plans or documents, to act under the instructions of the council. [244]

The duties of the county treasurer are not defined, but sect. 102 (4) of the Act provides that the offices of clerk of the county council and county treasurer shall not be held by the same person or by persons who stand in relation to one another as partners or employer and employee. [245]

(c) 18 Statutes 646.

(d) 8 Statutes 894, 895. Cf. the curious power of delegation of function to a county surveyor conferred on a county council by L.G.A., 1929, 1st Sched., Part I; 10 Statutes 976.

(e) 26 Statutes 363.

(f) The existing regulations are in the Sanitary Officers Order, 1926; S.R. & O., 1926, No. 552.

(g) 12 Statutes 975.

(h) *Ibid.*, 1078—1087.

(i) *I.e.* ss. 98—124; 26 Statutes 358—372.

Sect. 103 provides that the county M.O.H. shall perform such duties as may be prescribed by regulations of the M. of H. (k), and such other duties as may be assigned to him by the county council and that, for the purpose of his duties, he shall have the same powers of entry on premises as are conferred on the M.O.H. of a county district. [246]

Sect. 104 of the Act provides that a county surveyor shall perform such duties as may be determined by the county council.

Other sections of Part IV. of the Act refer in equally vague and general terms to the duties of officers required to be appointed by the councils of boroughs, urban districts and rural districts. [247]

**Allocation by Council.**—Each chief officer of a council is responsible for the administration of his own department and must perform such duties as may be assigned to him. These duties are usually specified in a memorandum circulated when the post is advertised and are embodied in a formal agreement with the officer.

It is generally recognised that the clerk or town clerk is responsible not only for the discharge of all duties directly imposed on him by statute, but that he should advise the council and their committees on matters of policy and procedure, ensure that their decisions are properly carried out, and generally should co-ordinate the administrative work of the various departments of the council and advise other officers in relation to their duties.

The department of the clerk is primarily an administrative as opposed to an executive department, and many of the clerk's duties, such as convening meetings of the council and of committees, counter-signing orders for payments, the preparation and dispatch of agenda papers, the keeping of minutes, the conduct of correspondence and the regulation of internal procedure are carried out by him and his staff as a matter of course in pursuance of the duties assigned to him at the time of his appointment. [248]

The following are typical standing orders relating respectively to the certification of accounts by the chief officers of all departments and to the specific duties assigned by the council to the treasurer's department. They are cited merely as examples of the way in which a local authority may define the duties of their officers by standing order:

*"All accounts shall be certified by the proper Chief Officers or their approved representatives, as being correct in the following respects :*

- (a) *That the goods or work have been duly supplied or executed.*
- (b) *That the account rendered is in accordance with the order or contract and, where the goods or work are not supplied or executed under contract, that the prices charged are proper.*
- (c) *That any proper discounts have been allowed."*

*"All accounts and certificates shall be checked as to arithmetical and general correctness in the Borough Treasurer's Department and the Borough Treasurer or his approved representative shall certify them previously to their being presented to the appropriate Committee. The accounts and certificates shall be deemed to have been passed by such Committee when they have been certified and signed or initialled on their behalf by a member of the Committee."* [249]

**Table of Duties.**—It has been considered useful to show, by means of a table, the way in which a number of authorities have planned

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(k) This method of prescription results from the combined effect of s. 103 and the definition of "prescribed" in s. 305 of the Act.

their work in as practical a manner as possible. The following table is not put forward as a model system of administration, but may serve to illustrate the way in which a typical authority of fair size and wide powers plan the administration of their powers and duties. Some of the functions mentioned below are restricted to authorities of a certain status or size, e.g. public assistance, but the table has been drawn on the widest lines for convenience of reference.

Department.	Sections.
Town Clerk's or Clerk's	<ul style="list-style-type: none"> <li>(1) Administration, including Council and Committee Minutes.</li> <li>(2) Legal and Parliamentary.</li> <li>(3) Registration and Elections.</li> <li>(4) Licensing.</li> </ul>
Treasurer's	<ul style="list-style-type: none"> <li>(1) Accountancy.</li> <li>(2) Internal Audit.</li> <li>(3) Rentals.</li> <li>(4) Rating and Valuation.</li> <li>(5) Collection : Indoor.</li> <li>(6) " Outdoor.</li> <li>(7) Estates.</li> <li>(8) Stationery.</li> <li>(9) General financial advice and control.</li> </ul>
Public Assistance	<ul style="list-style-type: none"> <li>(1) General Administration including Accounts, Salaries, Casepaper and Statistical (Records), Settlement and Removal, Lunacy and Warrants, Maintenance Recovery (liable relatives and others).</li> <li>(2) In-Maintenance, including Institution (Workhouse), Old People's Homes, Special Institutions and Certified Schools, Mental Hospitals.</li> <li>(3) Motor Transport.</li> <li>(4) Outdoor Relief including Old and Infirm and Able-bodied Persons, Schemes of Work and Instructional Classes, etc., Home Assistance and Boarding-out of Children, Administration of Medical Relief.</li> </ul>
Health	<ul style="list-style-type: none"> <li>(1) General Administration.</li> <li>(2) General Sanitation.</li> <li>(3) Maternity and Child Welfare (including Maternity Home and Infants Hospital).</li> <li>(4) Treatment of Tuberculosis (including Institutional treatment).</li> <li>(5) Treatment of Venereal Diseases (including Institutional treatment).</li> <li>(6) Pathological.</li> <li>(7) Public Analyst (including inspections under Food and Drugs Acts).</li> <li>(8) Treatment of Infectious Diseases (including Institutional Treatment).</li> <li>(9) Veterinary Inspection (including milk and food inspection).</li> <li>(10) Municipal Lodging House.</li> <li>* (11) Municipal General Hospital.</li> <li>† (12) School Medical Department.</li> </ul>

\* Administered by Health Committee subject to general direction and control of Public Assistance Committee.

† Administered by M.O.H. as School Medical Officer on behalf of Education Committee.

Department.	Sections.
Education	<ul style="list-style-type: none"> <li>(1) Administrative :           <ul style="list-style-type: none"> <li>(a) Higher Education.</li> <li>(b) Elementary Education.</li> </ul> </li> <li>(2) Finance.</li> <li>(3) Buildings.</li> <li>(4) School Attendance and Investigation.</li> <li>(5) Choice of Employment, Unemployment Insurance and After Care.</li> <li>(6) Blind Welfare.</li> <li>(7) Inspectorate.</li> </ul>
Libraries	<ul style="list-style-type: none"> <li>(1) Organisation and Equipment.</li> <li>(2) Classification and Cataloguing.</li> <li>(3) Secretarial.</li> <li>(4) General Administration.</li> </ul>
Museums and Art Galleries	<ul style="list-style-type: none"> <li>(1) Administration.</li> <li>(2) Fine Art.</li> <li>(3) Applied Art.</li> <li>(4) Ethnology.</li> <li>(5) Archaeology.</li> <li>(6) Local History.</li> <li>(7) Geology.</li> <li>(8) Zoology.</li> <li>(9) Botany.</li> </ul>
Engineer's	<ul style="list-style-type: none"> <li>(1) Clerical and Accountancy.</li> <li>(2) Highways.</li> <li>(3) Sewers and Sewage Disposal.</li> <li>(4) Buildings : Inspection.           <ul style="list-style-type: none"> <li>„ Town Planning.</li> <li>„ Public Buildings.</li> </ul> </li> <li>(5) Engineering : Bridges.           <ul style="list-style-type: none"> <li>„ Road Construction.</li> <li>„ General.</li> </ul> </li> <li>(6) Works and Depots.</li> </ul>
Lighting and Cleansing	<ul style="list-style-type: none"> <li>(1) Lighting (Public Street) :           <ul style="list-style-type: none"> <li>(a) Electricity.</li> <li>(b) Gas.</li> </ul> </li> <li>(2) Cleansing :           <ul style="list-style-type: none"> <li>(a) Collection and Disposal of Domestic Refuse.</li> <li>(b) Street Cleansing.</li> <li>(c) Transport : Motor.               <ul style="list-style-type: none"> <li>„ Horse.</li> </ul> </li> <li>(d) Workshops : Construction.               <ul style="list-style-type: none"> <li>„ Repairs.</li> </ul> </li> <li>(e) Rats and Mice Destruction.</li> </ul> </li> </ul>
Baths	<ul style="list-style-type: none"> <li>(1) Administration.</li> <li>(2) Engineering.</li> <li>(3) Swimming.</li> <li>(4) Hygiene.</li> </ul>
Gas	<ul style="list-style-type: none"> <li>(1) Administration and Management.</li> <li>(2) Accountancy.</li> <li>(3) Engineering.</li> <li>(4) Gas Manufacturing.</li> <li>(5) Chemical.</li> <li>(6) Distribution.</li> <li>(7) Meters, Stoves and Maintenance.</li> </ul>
Electricity	<ul style="list-style-type: none"> <li>(1) Generation.</li> <li>(2) Mains.</li> </ul>

Department.	Sections.
Electricity ( <i>continued</i> ).	(3) Sub-stations. (4) Consumers. (5) Commercial.
Water	(1) Engineering. (2) Drawing Office. (3) Maintenance. (4) Statistical and Accounts.
Transport ( <i>e.g.</i> tramways or omnibuses)	(1) Administrative and General Office. (2) Traffic. (3) Engineering : Electric Cars. "            Petrol Buses and other motor vehicles. (4) Permanent Way. (5) Overhead Equipment.
Markets	(1) Cattle Market and Lairs. (2) Miscellaneous Markets.
Parks and Open Spaces	(1) Administration. (2) Gardening. (3) Games and Entertainments. (4) Constructional.

The Weights and Measures Department is in some areas administered as a section of the Police Department under the control of the Chief Constable but in the larger authorities it is administered under an Inspector of Weights and Measures as a separate department.

The size of each section varies with the size of the authority, and the officer in charge of each section is usually responsible to the head or deputy head of the department for the work of the section. In the smaller authorities the size of the staff does not admit of the work being sectionalised, and the head of the department usually supervises personally the work of all his senior staff, each of whom as a general rule will carry out a greater variety of duties than in the case of the larger authorities. [250]

#### POWERS OF OFFICERS

In addition to the instances given, *ante*, on pp. 123, 124, in which duties are imposed on officers by statute, the following examples may also be referred to :

Under sect. 27 (2) of the Food and Drugs (Adulteration) Act, 1928 (*l*), where an analyst has analysed any article submitted to him and has given his certificate of the result, from which it appears that an offence under that Act has been committed, the person causing the analysis to be made, *i.e.* a sanitary inspector or person acting on behalf of the M.O.H., may prosecute under the sub-section. The result of the proceedings is, of course, reported to the local authority, but the initiation of the proceedings does not require the authority of the council or committee.

As further examples may be mentioned the duty of the surveyor to apportion the expenses of making up private streets (*m*) and the duty of a surveyor to make secure dangerous buildings under sect. 75 of

(*l*) 8 Statutes 900.

(*m*) Under s. 150 of the P.H.A., 1875; 13 Statutes 686; or under s. 6 of the Private Street Works Act, 1892; 9 Statutes 196.

the Towns Improvement Clauses Act, 1847 (*n*). In all these and cognate cases, the officer acts without the express sanction of the council, and no ratification is necessary, although, of course, the officer will report his acts to the appropriate committee of the council. [251]

In considering these cases, however, it is necessary to distinguish between powers and duties. Where a power is conferred, and the officer is allowed a discretion as to the manner in which he will exercise it, if he can show that he applied his discretion *bona fide*, no court of law will compel him to exercise that power. But where a duty is imposed, the officer has no option but to perform the duty, though he may do so in the manner which seems to him best.

In most of the decided cases the question here discussed has arisen incidentally in the course of deciding on the responsibility of the council for some act or omission of an employee. The decisions on the latter question will be found under the title EMPLOYEES AND COMMITTEES, RESPONSIBILITY FOR ACTS OF. For the protection of officers in the performance of their functions, see title PUBLIC AUTHORITIES PROTECTION. [252]

The question whether powers or duties are exercisable by an officer directly under statute or whether they are performed by the officer as an agent of the council by whom he is appointed has frequently arisen in deciding whether the council are liable for a negligent act of the officer (*o*). Two decisions may be mentioned here.

In *Stanbury v. Exeter Corporation* (*p*), an inspector appointed by the council under the Diseases of Animals Act, 1894, negligently detained some sheep, but the court decided that the council were not liable as they held that the inspector was acting in execution of a duty imposed by an order of the Board of Agriculture. In the more recent case of *Fisher v. Oldham Corporation* (*q*), a borough constable had wrongfully arrested the plaintiff, but it was decided that the council were not liable as the court held that this duty was being performed by the officer as a servant of the Crown. [253]

To answer the question whether an officer is acting as an agent of the council, it must first be ascertained whether the council have delegated duties or powers which they were entitled to exercise, or whether the act complained of was done by virtue of a public obligation imposed, not on the council but on an officer whom they were ordered to appoint. It is, as we have seen, upon the local authority itself and not upon its officers, that the majority of powers and duties are conferred or imposed. When this is the case, a resolution of the council must be passed that the power is to be exercised or the duty performed by an agent. In such cases, the council will not be liable for any act done to or notice served by any officer who has not been authorised by an express resolution of the council, and if an inhabitant is thereby injuriously affected, he has an action for damages against the officer who has caused the injury.

There is, however, a provision in sect. 265 of the P.H.A., 1875 (*r*), which protects any member and any officer of a local authority from personal liability for any acts done by such member or officer or by any other person acting under the direction of the local authority and where

(*n*) 13 Statutes 554.

(*o*) See also title ACCIDENTS at p. 11 of Vol. I.

(*p*) [1905] 2 K. B. 838; 34 Digest 39, 156.

(*q*) [1930] 2 K. B. 364; Digest (Supp.).

(*r*) 13 Statutes 734.

the act was done *bona fide*. This provision only applies to acts done in the execution of the P.H.A., 1875, but has been often applied to the execution of local Acts. The interpretation of the section has given rise to much difficulty as will be seen from the decisions recorded on pp. 584—592 of Lumley's Public Health, 10th ed. [254]

Where an officer has been authorised by a committee to carry out certain work, different considerations arise. Sect. 85 of the L.G.A., 1933 (s), has given to councils the power to delegate any of their functions to committees, with the exception that they may not delegate power to levy or issue a precept for a rate, or to borrow money. Where the council have used this power of delegation, the committee to which the powers of the council have been delegated stand in the shoes of the council, and an officer acting under an authority from such a committee will be acting within the scope of his duties.

Where a chief officer has been instructed to carry out any task which the council may or must carry out, he alone is responsible for the due execution of the task. He may delegate the task, in whole or in part, to a member of his staff, but, under the general principles of the law of agency, he is liable to the council or the committee which has instructed him for the acts or omissions of every member of his staff. Accordingly, on the order of a superior officer, a local government officer may act in the capacity of the agent of that superior officer, who will be responsible both to third parties and to the council as principal for the conduct of the subordinate officer in carrying out his duties. This is so whether the duty is imposed on the superior officer by the council who appointed him or by the Legislature. [255]

#### POWER OF OFFICERS TO BIND COUNCIL

**Contract.**—Where an officer has been authorised to act as an agent of the council by whom he is employed, the ordinary principles of the law of contract apply.

In most cases the officer will be given a special power to negotiate on behalf of his council, in which case he will represent himself to third parties as agent for a named principal, viz. the council by whom he is employed. Here the matter is perfectly straightforward, and the agent drops out of the negotiations at the moment when the contract is approved by the council and ratified by its seal; the contracting party will then have an enforceable contract against the council and with no one else. [256]

In certain cases, however, a council may desire to remain anonymous in negotiations; particularly in the matter of the acquisition of land. In such a case it is possible that a council might authorise an officer to act in relation to third parties as for an undisclosed principal, or instruct an officer to negotiate for the purchase of certain property without disclosing the fact that he is acting as an agent. In both these cases, the officer would be subject to the general law of contract, but it will be as well to mention briefly the rules of law which apply where an officer has been given authority to act as agent for his council, firstly where the latter remain unnamed, and secondly where the fact that the officer is acting as an agent is not to be disclosed.

In the former case, the officer will at no time himself be liable on any contract which he may form so long as he expressly holds himself out to be acting only as an agent. On the completion of the contract, the officer will drop out of relation with the contracting third party, who will then have a valid contract with the local authority.

Where the existence of the council is undisclosed, the contracting third party, when he discovers the true facts, is entitled to elect whether he will treat the officer or the council as the party with whom he dealt. If he takes the latter course, the council will be liable for all acts of the officer within the ambit of the powers with which the officer was endowed. After the officer has completed the contract, the council may itself sue upon it, though the contracting party will be able to set up any defence which would have been good as against the officer. The officer, in negotiating, must not hold himself out unequivocally as principal, or he may be estopped from alleging that he is acting as agent ; but in this matter he is allowed great latitude. [257]

The power of a local authority to negotiate incognito is considerably curtailed by sect. 266 (2) of the L.G.A., 1933 (*t*), which provides that before a contract for the supply of materials or for the execution of works is entered into, notice of the intention must be published and tenders invited, except in such cases as are provided for in standing orders ; but even where the standing orders have not been complied with a contract otherwise legally entered into will be valid and binding on both parties. Model standing orders were circulated in March, 1934, with circular No. 1388 of the M. of H. [258]

**Claims by Third Parties.**—This type of case arises where a council or their officers have failed to carry out a duty or to exercise a discretion which is laid upon them by statute or at common law. Where, for instance, an aggrieved person claims against a council for damage incurred through the negligence of the council's employees in repairing a highway, it is occasionally the practice that the solicitor to the council in collaboration with the engineer or surveyor and the chairman of the appropriate committee, should decide whether in fact the claim is a reasonable one, and, if it is not, it should deny liability on behalf of the council.

In any cases where the council's liability is not clear, the clerk or town clerk will naturally report this to the appropriate committee and advise the committee thereon. The committee will then pass a resolution either authorising an officer to negotiate a settlement of the action or instructing him to take all necessary steps to defend it. [259]

**Claims against Third Parties.**—This is a matter in which a specific authorisation by the council or a committee is more necessary, though even here claims are often made by an officer on his own initiative. In more important matters, such as a demand for recovery of expenses incurred by a council in executing private street works, express authorisation is necessary before an officer may take action. But there are many small cases, such as arrears of rent or rates, or damage to a council's property, where an officer, after consultation with the solicitor to the council and the chairman of the appropriate committee, will prefer a claim which he considers to be well founded.

There is no hard-and-fast line between cases where an officer requires an authority from his council before he may make a claim and those in which he may use his discretion. In the more serious cases, however,

it is obviously the duty of an officer to place disputes before the appropriate committee of his council for consideration and decision. [260]

**Administration of Enactments.**—Whether an officer has power to bind third parties in carrying out the administration of statutory provisions depends on the provisions of the particular statute which contains the power or duty. Where an enactment provides that the local authority shall, or may, authorise a certain officer to carry out a certain act, or that the council shall itself carry out the provisions of the statute, an officer cannot do any valid act until he has received an authority from his council or the action taken by him has been ratified (*u*). On the other hand, in certain cases the power or duty is laid upon the officer himself, and in this class of case an officer is able to act without the express sanction of his council, who usually will not be liable for his acts or omissions (*a*). [261]

**Emergencies.**—Except in special cases provided for by statute, a local government officer has no special power vested in him to act on his own initiative in a case of emergency.

Where it is known that action must be taken before the next ordinary meeting of a committee, the committee may authorise an officer in general terms to take such action as he may deem necessary after consultation with the chairman of the committee. Similarly, when a council goes into recess, a resolution is usually passed empowering the chairmen and vice-chairmen of all standing committees to act in matters of emergency which may be brought to their notice prior to the next meeting of the council. [262]

#### SIGNATURE OF DOCUMENTS. LEGAL PROCEEDINGS

**Power to Sign Documents.**—Sect. 266 of the P.H.A., 1875 (*b*), gives to the clerk, surveyor and sanitary inspector the power of signing any notices, orders and other such documents required to be signed under that Act. On a strict interpretation of the section, it would seem that any of these officers could sign any such document, but presumably the section should be construed *reddendo singula singulis*, so that the notices referred to must be such as each officer by virtue of his office may properly sign.

Parliament has made no further general provision, and the power of officers to sign official documents, cheques, etc., is generally set out in the standing orders of the council. These generally provide, for instance, that cheques shall be drawn by the treasurer and countersigned by the town clerk or clerk, in accordance with an order signed by the Mayor or Chairman and two members of the Finance Committee, and that the affixing of the seal shall be attested by the signatures of two members and the clerk (*c*). [263]

**Power to Take or Defend Proceedings.**—A power to prosecute and defend legal proceedings, when it is deemed expedient for the promotion or protection of the interests of inhabitants of the area, is given to councils of counties, boroughs, districts and parishes by sect. 276 of the L.G.A., 1933 (*d*). By sect. 277, any such council may by resolution

(*u*) See *Firth v. Staines*, [1897] 2 Q. B. 70; 38 Digest 169, 130; and *R. v. Chapman, ex parte Arlidge*, [1918] 2 K. B. 298; 36 Digest 233, 729.

(*a*) See also title EMPLOYEES AND COMMITTEES, RESPONSIBILITY FOR ACTS OF.

(*b*) 18 Statutes 785.

(*c*) See also title STANDING ORDERS.

(*d*) 26 Statutes 452.

authorise any of their members or officers to represent them before any court of summary jurisdiction, notwithstanding that such member or officer is not a solicitor. The officer requires specific authorisation before he is able to proceed, but such authorisation need not be in respect of each case, and, indeed, is often conferred upon an officer on his appointment. The fact that an officer has been authorised to take or defend proceedings need not be formally proved, if he states his authority and it is not contested. Where his authority is disputed, it may be established by the production of the minute book containing the authorising resolution of the council (e). [264]

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(e) Act of 1933, 3rd Sched., Part V, para. 3; 26 Statutes 501.

## DYKES

*See DITCHES.*

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## DYSENTERY

*See INFECTIOUS DISEASES.*

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## EARLY CLOSING

*See SHOPS.*

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## EARTH CLOSETS

*See SANITARY CONVENIENCES.*

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# EASEMENTS

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*See also titles : COMPENSATION ON ACQUISITION OF LAND ;  
COMPULSORY PURCHASE OF LAND ;  
SEWERS, CONSTRUCTION OF ;  
SLUM CLEARANCE.*

FOR THE GENERAL LAW RELATING TO EASEMENTS, SEE HALSBURY'S LAWS OF ENGLAND (2ND ED.), VOL. II., TITLE "EASEMENTS AND PROFITS À PRENDRE."

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**Introduction.**—In this title the Law of Property aspect of Easements will not be dealt with ; its purpose is to deal with easements as they affect local authorities, and to outline the powers of a local authority to grant, acquire, and extinguish easements.

An easement is a legal servitude imposed upon one piece of land for the benefit of another piece of land, running with each of these tenements at law, and not involving an appropriation of any part of the produce or substance of the servient land.

The chief recognised easements are (1) rights of way, (2) rights of entry for any purpose relating to the dominant land (*a*), (3) rights in respect of the support of land and buildings, (4) rights of light and air, (5) rights in respect of water, (6) rights to do some act to the prejudice of the use of the servient land (*b*), and (7) rights of placing or keeping things on the servient land (*c*). [265]

Until the middle of the nineteenth century it had been the confirmed opinion of lawyers that a way which had been dedicated to the use of the public still remained in the absolute possession and control of the owner of the soil, and was merely subject to an easement in favour of the public, an easement of passage. This contention was swept away, however, by Lord Cairns' judgment in the case of *Rangeley v. Midland Rail. Co.* (*d*), on the ground that there can be no easement unless there is both a dominant and a servient tenement, and in the case of a *public* right there can be no dominant tenement. This title will, therefore, contain no reference to matters such as the dedication of ways to the public use.

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(a) *E.g.* a right to enter and open sluice gates to prevent flooding. *Simpson v. Godmanchester Corpn.*, [1897] A. C. 696 ; 19 Digest 14, 29.

(b) *E.g.* a right to conduct a noisy or otherwise offensive business. *Elliotson v. Feetham* (1835), 2 Bing. N. C. 134 ; 19 Digest 179, 1291 ; *Sturges v. Bridgman* (1879), 11 Ch. D. 852 ; 19 Digest 179, 1294.

(c) *Hoare v. Metropolitan Board of Works* (1874), L. R. 9 Q. B. 296 ; 19 Digest 177, 1280 ; *Moody v. Steggles* (1879), 12 Ch. D. 261 ; 19 Digest 66, 381.

(d) (1868), 3 Ch. App. 306, at p. 311 ; 19 Digest 13, 25 ; and see *R. v. Pratt* (1855), 4 E. & B. 860 ; 26 Digest 317, 494.

Local authorities are, from the aspect of the Law of Property regarding easements, in precisely the same position as any private individual, but in certain instances a local authority have need of more extensive powers than a private landowner in order to carry out their duties without hindrance from the rights of third parties. [266]

**Grant of Easements.**—This power may be exercised by a local authority in the same way as by an ordinary landowner, with this distinction ; that while a landowner may have an unfettered discretion in dealing with his land, the local authority must always act for the benefit of the community. It would perhaps be truer to say that a local authority have the same powers and duties as a trustee in this matter, since it is their duty always to act in the interests of the local government electors.

There is, however, one restriction on the absolute freedom of a local authority to grant easements. A corporation cannot grant any easement or public right over their land which is inconsistent with the objects for which they were established (e). This restriction, however, is more in the nature of a protection, since it prevents rights from springing up which will interfere with the user of a corporation's land. The interference must be substantial before an easement will be negatived, and it has been held (f) that even a public right of way by a level crossing across a railway company's lines was not incompatible with the existence or convenient use of the railway, and, therefore, not inconsistent with the purposes for which the land was held by the company. [267]

**Acquisition of Easements.**—In this respect a local authority are more active than a private owner of land. A local authority often act as public utility undertakers for providing a supply of gas, electricity, or water. In such cases it will be necessary to have power to lay pipes and cables and the acquisition of an easement in the land in which the pipes are laid will be necessary. Sometimes a local authority are given the right to lay pipes, etc., in private land by Act of Parliament (g), but generally the right is acquired in the ordinary way by agreement with the owner of the land affected.

In deciding whether or no an easement actually exists, however, the general rules of law must, of course, be applied. The right must, therefore, exist by reason of an express grant by deed, or by reason of the Prescription Act, 1832 (h). The exact provisions applicable in these cases cannot be discussed here, but in passing it should be noted that an easement cannot be claimed as having been obtained against the wishes of the supposed grantor, nor in secret, nor on the ground that the supposed grantor has merely given his permission ; and further that there can be no such right as an easement in gross ; i.e. the land of the local authority (where the authority claim an easement) must adjoin or be in such other position as to be benefited by a use of the servient tenement. Thus, the electricity station or reservoirs of a local authority might be held to be a dominant tenement to which the right of support

(e) *Myers v. Catterson* (1889), 43 Ch. D. 470, *per Cotton, L.J.* ; 19 Digest 49, 271, and see also *S.E. Rail. Co. v. Associated Portland Cement Manufacturers* (1900), *Ltd.*, [1910] 1 Ch. 12 ; 19 Digest 26, 112.

(f) *S.E. Rail. Co. v. Warr* (1923), 21 L. G. R. 669 ; 26 Digest 291, 232.

(g) See e.g. ss. 16, 54, 308 of the P.H.A., 1875 ; 13 Statutes 633, 649, 755.

(h) 5 Statutes 823.

for cables or ducts is attached. It has been decided (*i*), however, that a public highway cannot be considered to be vested in a local authority for the purpose of enforcing a restrictive covenant, and this would in all probability extend to a claim to an easement. [268]

The definition of "lands" in sect. 4 of the P.H.A., 1875 (*k*), includes easements, and the power to purchase land for the purposes of that Act therefore includes the purchase of easements. This course has also been followed in the L.G.A., 1933, sect. 305 of which (*l*) defines "land" as including any interest in land and any easement or right in, to or over land. Thus "land" in the provisions in Part VII. of that Act (*m*) as to the acquisition of land by agreement, or under the authority of an order by compulsion, includes easements. "Land" in the Acquisition of Land (Assessment of Compensation) Act, 1919, includes easements (*mm*) and that Act therefore applies in the compulsory purchase of an easement. [269]

**Extinguishment of Easements.**—Sect. 176 of the P.H.A., 1875 (*n*), allowed a local authority to obtain a provisional order authorising them to purchase compulsorily land required by them for the purposes of that Act. This provision has now been repealed by the L.G.A., 1933, and the corresponding authority is now in sect. 160 of that Act (*o*) which also applies to easements. Where houses or lands are taken under these powers, easements over them enjoyed by the owners of adjoining properties not purchased may, if they interfere with the proposed use of the houses or lands taken, be extinguished, the owners being entitled to compensation (*p*).

It will be appreciated that this special power of local authorities to extinguish easements is conferred solely for the purpose of rendering more efficacious and useful the authorised work. It is obvious that a scheme of a local authority might easily be stultified and rendered useless on account of some restriction placed by a private owner on land purchased by the local authority. This power of extinguishment is extended by sect. 13 of the Housing Act, 1930 (*q*). Land acquired by a local authority for the purpose of an improvement or clearance scheme might become useless owing to a right of way or a right of light which another landowner has acquired over the site. Sect. 13, therefore, empowers a local authority to cause all private rights of way, and rights of laying down or of continuing any pipes, sewers, drains, wires or cables through land so acquired, or any other easements existing over the land, to be extinguished, upon payment of compensation as assessed by an arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919 (*r*). Public rights of

(*i*) *L.C.C. v. Allen*, [1914] 3 K. B. 642; 40 Digest 302, 2602.

(*k*) 13 Statutes 624.

(*l*) 26 Statutes 465.

(*m*) *Ibid.*, 391 *et seq.*

(*mm*) See s. 12 (2); 2 Statutes 1183.

(*n*) 13 Statutes 700.

(*o*) 26 Statutes 393.

(*p*) The readiest illustration of this power is that of the right to light, as to which see *Clark v. London School Board* (1874), 9 Ch. App. 120; 19 Digest 572, 117; *Bedford (Duke of) v. Dawson* (1875), L. R. 20 Eq. 353; 11 Digest 187, 234; *Baker v. St. Marylebone, Vestry* (1876), 35 L. T. 129; 11 Digest 134, 212. See also *Great Central Rail. Co. v. Balby-with-Hexthorpe U.D.C.*, [1912] 2 Ch. 110; 11 Digest 109, 56.

(*q*) 23 Statutes 406.

(*r*) See title COMPULSORY PURCHASE OF LAND.

way may also be extinguished by order of the council, provided that the consent of the M. of H. is obtained (*ibid.*) (s). [270]

**Registration as Land Charges.**—Under sect. 10 (1) of the Land Charges Act, 1925 (t), any easement, right or privilege over or affecting land created or arising after the commencement of that Act and being merely an equitable interest may be registered as a land charge in the Register of Land Charges. [271]

(s) For the general power of extinguishment of easements under Town and Country Planning Act, 1932, s. 11 and 2nd sched., para. 11 (25 Statutes 484, 529), see title TOWN PLANNING SCHEMES.

(t) Class D; 15 Statutes 534.

## EDUCATION

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Reference may be made to the title " Education " in Halsbury's Laws of England (2nd ed.), Vol. 12, p. 1.

**Scope of Education Articles.**—This title covers in outline the chief branches of the education services. The most important sections of this subject are dealt with in special titles which amplify the brief details given in this article. The following titles may be consulted for particular points : ACCIDENTS (for accidents to school children, students and teachers (a)); AGRICULTURAL EDUCATION; APPROVED SCHOOLS; BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN (on this subject see also title HIGHER EDUCATION); BOARD OF EDUCATION; CENTRAL AND SENIOR SCHOOLS; CHARITIES (for educational charities (b)); CONTINUATION SCHOOLS; DAY NURSERIES; DIRECTOR OF EDUCATION; EDUCATION AUTHORITY; EDUCATION COMMITTEE; EDUCATION FINANCE; EDUCATION INSPECTOR; EDUCATION SPECIAL SERVICES; ELEMENTARY EDUCATION; HIGHER EDUCATION; INSTITUTION CHILDREN; NON-PROVIDED SCHOOLS; NON-VOCATIONAL EDUCATION; OPEN-AIR SCHOOLS; RELIGIOUS INSTRUCTION IN SCHOOLS; SECONDARY EDUCATION; TEACHERS; TECHNICAL AND COMMERCIAL EDUCATION. [272]

**Introduction.**—Students of comparative education have frequently contrasted the " patchwork " of the educational system of England and Wales with the more formal educational systems of some other countries. Like most English institutions, English education has been built up out of practice and experience spread out over a considerable period; in consequence it is hardly a system at all and at many points betrays the English love of compromise. Yet despite its lack

of logic, the system justifies itself by its practical success and by its capacity to adjust itself to modern conditions.

History explains many of the features of the modern English educational system. It has grown for the most part out of the efforts of private individuals or voluntary bodies. The British tradition has been to leave pioneering to voluntary agencies, and for the State to take over the work when its value to the nation has been proved and the burden has become too heavy for private effort. Popular education in England and Wales began as a work of piety or philanthropy on the part of charitable individuals or associations of such individuals, and was subsequently taken up on a national scale by two voluntary associations—the National Society and the British and Foreign School Society, representing the Established Church and the Dissenters respectively. It still bears some of the marks of its origin. The dual system, the classification of public elementary schools into provided and non-provided schools, with provision for the public management of the former and quasi-private management of the latter, is the result of the settlement by compromise embodied in the Education Act, 1902, and left undisturbed by the Education Act, 1921 (c), of the issue in which the extremists were, on the one side, the secularists, who were discontented with the denominational basis of the non-provided schools, and, on the other, the denominationalists who demanded the inclusion of religion in the curriculum of the provided schools. This compromise accounts for the somewhat complicated legal position of the public elementary schools. Religious instruction may be given in provided schools, but such instruction must be of an undenominational character, and must not be given to children whose parents desire their withdrawal therefrom under the "conscience" clause (d). In non-provided schools the religious instruction may be of a denominational character conformable to the provisions (if any) of the trust deed relating to the school, and pupils of other denominations may be admitted to the school, but neither they nor any other children are compelled as a condition of admission to receive religious instruction (e). The premises of the provided or council school are provided, and the school is maintained, by the local education authority. The premises of the non-provided school are provided by the managers and the school is maintained by the local education authority. The provided school is managed either by the local education authority or by a committee of managers consisting of representatives appointed by the local education authority and the minor local authority (f). The non-provided school is managed by a body of managers consisting generally of four foundation managers, representing the denomination, and two managers appointed by the local education authority and the minor local authority respectively (g). In the provided schools, the instruction, both secular and religious, is controlled by the local education authority; in the non-provided school secular instruction is under the control of the local education authority and religious instruction under the control of the managers (h). Naturally the arrangements for the appointment and dismissal of teachers are not excluded from the

(c) 7 Statutes 130.

(d) Education Act, 1921, ss. 27 (1) (a), 28; 7 Statutes 142, 143.

(e) Act of 1921, ss. 27 (1) (a), 29 (5) (c).

(f) *Ibid.*, s. 30 (1).

(g) *Ibid.*, s. 30 (2).

(h) *Ibid.*, ss. 28, 29 (2).

compromise and, wisely perhaps, the Board of Education avoid the risk of embroilment in religious controversy by excluding religious instruction in both provided and non-provided elementary schools from the purview of their inspectors. Fortunately, the secondary school system has been kept out of the arena of denominational controversy, and religious instruction in recognised secondary schools is inspected by the Board's inspectors. [273]

Viewed from another aspect, the English educational system exhibits a similar spirit of compromise. It may be argued that though there are few citizens of a modern State who would claim that the child's education is entirely a matter for the parent, there are some countries in which the education of the rising generation is regarded as being largely the concern of the State, and the parent is deprived of initiative and responsibility in regard to it. England has adopted a democratic policy which lies midway between these extremes. It is based on the ideal of co-operation between the family and the State. The parents have the original right to educate their children, but the State takes steps to ensure that this right is exercised, and that the child is not deprived of the opportunity to acquire modern culture independently both of the Board of Education and the local education authorities. Thus, in England, a system of "private schools" exists side by side with the system of elementary and secondary schools maintained or aided by grants from the central and local education authorities. The parent is free to arrange for the education of his child at any school; he may even elect to withhold his child altogether from attendance at a school, provided that he is able to satisfy the magistrates that his child is receiving the modicum of instruction which the State deems indispensable for its citizens, namely, efficient elementary instruction in reading, writing and arithmetic between the ages of five and fourteen years (*i*).

English local government may be described as a nice adjustment of responsibility between central and local authorities, and the description is specially applicable to the education service. In France the administration of education is completely centralised; in Canada it is organised on a federal basis, the provinces being sovereign in educational matters and uncontrolled by any unifying authority. The English system is as usual a more or less successful compromise. The Board of Education, as the central authority possessing a large measure of financial control, wields effective power, whilst the publicly elected local education authorities have sufficient responsibility to make their autonomy a reality. [274]

**The Board of Education.**—The Board of Education was established by the Board of Education Act, 1899 (*k*). Both the Education Department and the Department of Science and Art were superseded, and the Board took over certain powers of the Charity Commissioners and the Board of Agriculture in relation to education. Although the Board were charged by the Act with the general superintendence of educational matters in England and Wales, their control of the educational system was, and still is, incomplete. They have no authority over the Universities, except in so far as courses are provided for the training of teachers, over those endowed schools, including the Public Schools, which do not receive grants, over schools run for private profit,

(*i*) Education Act, 1921, s. 42; 7 Statutes 153.

(*k*) 7 Statutes 124.

"approved schools" for delinquent and other children and young persons, Army or Navy Schools, schools for poor law children, etc. The Minister of Agriculture and Fisheries is responsible for agricultural education, and the Minister of Labour for centres of instruction for unemployed juveniles.

The Board of Education do not provide, own or directly control any educational institution with the single exception of the Royal College of Art. They do not employ or pay teachers (except the staff of the Royal College of Art), yet they are responsible for pensions paid under the Teachers (Superannuation) Act, 1925 (*l*). Nor do they prescribe or recommend text books, or actually determine curricula or methods. The source of the Board's influence on the maintenance and development of education is their power to withhold or reduce grants. This influence is considerable, since the grants cover about one-half of the public expenditure upon education. Thus, while the initiative largely rests with the local education authorities or with voluntary bodies, the Board are able to exercise a general superintendence of the maintenance and development of the education service and to insist upon such standards of efficiency and economy as may be determined by Parliament from time to time.

The head of the Education Department is the President of the Board of Education, who is usually a Cabinet Minister. He is assisted by a Parliamentary Secretary who is also a member of the Government and of the House of Lords or Commons. The Department is staffed by a body of permanent civil servants with a permanent secretary at their head. There is a separate Welsh Department with its own permanent secretary. A corps of Inspectors (H.M. Inspectors of Schools), the "eyes and ears" of the Board, is the link between the Board and the schools which are aided or recognised and—which is an equally valuable function—between schools of all types.

[275]

**Local Education Authorities.**—The actual administration of the national system of education is in the hands of the 316 local education authorities constituted in accordance with sect. 3 of the Education Act, 1921 (*m*). There are two categories of local education authorities, authorities for elementary education and authorities for higher education.

The simplest administrative unit is the county or county borough, in which the county or county borough council are the local education authority for both forms of education; the position is more complicated in certain boroughs or urban districts where the county council are the authority for higher education and the borough or district council the authority for elementary education. This division of education into elementary and higher, the latter branch being defined in sect. 170 of the Act of 1921 (*n*) as "education other than elementary," is an administrative rather than an educational distinction. The term "elementary" in regard to education belongs to the time when "elementary" schools were regarded as schools providing instruction in the three R's for a particular class of children, the children of the "labouring and other poorer classes" (*o*). The instruction given to the children of these classes was regarded as something distinct in kind,

(*l*) 7 Statutes 317.

(*m*) *Ibid.*, 131.

(*n*) *Ibid.*, 212.

(*o*) See the definition of "elementary school" in s. 170 of the Act; 7 Statutes 212.

no less than in quantity, from the education purchased elsewhere by more prosperous parents for children of similar ages but different social position. It no doubt seemed natural that the education which was distinguished on social grounds should also be distinguished administratively. [276]

The more progressive school boards had attempted to broaden the curriculum of the elementary schools, and their successors, the local education authorities for elementary education, taking advantage of the wider powers placed in their hands by the Education Act, 1902, began to make comprehensive provision for the advanced instruction of the older children in their elementary schools by means of higher grade or higher standard schools, central schools, etc., It was inevitable, therefore, that administrative difficulties should arise in areas where education powers were exercised by two authorities acting independently of each other. Attempts to unify the system were made in connection with the 1902 Act and subsequently, but these were unsuccessful.

The educational developments of recent years have again drawn attention to the question of administrative areas. The Consultative Committee of the Board of Education (the Hadow Committee), in their Report "The Education of the Adolescent," made a fresh classification based on psychological and other considerations of the two main stages of education. In their view, and their conclusions have been generally accepted, "primary education should be regarded as ending at about the age of 11+. At that age, a second stage . . . should begin ; and this stage ("the post-primary stage") which for many pupils would end at 16+, for some at 18+ or 19+, but for the majority at 14+ or 15+, should be envisaged so far as possible as a single whole, within which there will be a variety in the types of education supplied, but which will be marked by the common characteristic that its aim is to provide for the needs of children who are entering and passing through the stage of adolescence" (p). It will be seen later that the acceptance of this conclusion entails a reorganisation of the elementary school system. It has an important bearing upon the administration of education. As the law now stands, the administration of post-primary schools may be in the hands of two independent authorities, the secondary and technical schools being administered by the authority for higher education, and other types of post-primary schools (e.g. central schools and classes, senior schools, senior departments, etc.) by the authority for elementary education. The result may be duplication and lack of co-ordination in the educational provision. It is generally agreed that the unification of administration would make for a much improved educational service. The point at which disagreement begins to arise is the question as to a suitable administrative unit for all forms of education. The Consultative Committee suggested four lines upon which reform might be attempted, but their recommendations have not commanded the same degree of assent as the other recommendations of their Report. [277]

Some provision for consultation and co-operation between the two types of local education authorities is made in the Education Act, 1921. For example, sect. 8 (q) requires the local education authority for elementary education to co-operate with local education authorities

(p) Board of Education, Report of the Consultative Committee on "The Education of the Adolescent," (1926) Ch. II., § 87.

(q) 7 Statutes 184.

for higher education in matters of common interest, and particularly in respect of the preparation of children for further education in schools other than elementary and for their transfer at suitable ages to such schools. Co-operation is also required in regard to the supply and training of teachers. Another provision designed to prevent overlapping is contained in sect. 14 of the Act (*r*). In the preparation of schemes under Part II. of the Act, the county council are required to consult the other authorities within their county (if any) who are authorities for elementary education, with reference to the mode in which and the extent to which any such authority will co-operate with the county council in carrying out their scheme. Any such authority may submit to the Board of Education as well as to the council of the county, for consideration in connection with the county scheme, any proposals or representations relating to the provision or organisation of education in the area of that authority.

Sect. 6 (1) of the Act (*s*) empowers local education authorities to co-operate or combine for the purpose of performing any duty or exercising any power under the Act by the appointment of a joint committee or a joint body of managers, and sub-sect. (2) offers the possibility of a federation of two or more authorities by a scheme of the Board of Education made on their application.

Though it is clear that co-operation between local education authorities is contemplated by the Education Act, 1921, and that co-operation between Part II. and Part III. authorities is mandatory, the extent of co-operative action, especially in certain areas, is probably not as wide as is desirable in the interests of the education service. [278]

**Public Elementary Schools.**—The education of the majority of the nation's children begins and ends in the public elementary school, and for most of them its duration is from the beginning of the term which follows their 5th birthday to the end of the term following their 14th birthday. About five-and-a-half million children are in attendance at such schools. All local education authorities are required by sect. 17 of the Act of 1921 (*t*) to maintain a sufficient number of elementary schools to meet the needs of the children in their area. Elementary education being compulsory, the education given in the public elementary schools is free. Although the age of obligation ends on 14 years being attained, children may remain in attendance at public elementary schools beyond that age.

From the legal point of view the classification of public elementary schools is a simple matter—they fall into two categories : (1) provided or council schools, and (2) non-provided or voluntary schools. From the educational point of view their classification is more complicated. The schools are organised in departments, a department being a school or portion of a school under the charge of a head teacher. Thus a school building may accommodate one or more departments. The schools are organised according to the policy of the local education authority. Some authorities arrange for children from 5—7 or from 5—8 years of age to be educated in separate infant departments ; others organise the classes for infant and junior children as a single unit. Sometimes at the junior stage of education, and frequently at the senior or post-primary stage, the sexes are divided and separate

departments arranged for boys and girls. The all-standard department taking children from 5—14 years of age is now disappearing as a result of the reorganisation of the public elementary schools in accordance with the principles of the Hadow Committee's Report. Although no hard and fast rule is laid down by the Board of Education or applied by the local education authorities generally in regard to the question of separate departments for infant and junior children, or of separate departments for boys and girls, the principle of the break at 11, which underlies the recommendations of that Report, is generally endorsed throughout the country and acted upon in so far as the local and national conditions permit. The result of this policy is to create self-contained primary schools (infant schools and junior schools either separate or combined) for children up to 11 years of age, and a number of quite distinct post-primary schools for children between the ages of 11 and 14. [279]

The special function of the infant school is "to provide for the educational needs of the years of transition that separate babyhood from childhood" and the curriculum is thought of "in terms of activity and experience rather than of knowledge to be acquired and facts to be stored" (u).

The function of the junior school is "to prepare children for the more diversified development of the senior stage, that is, to give them a mastery of the tools and elements of instruction and to enliven and open their minds for the more complex courses of the post-primary stage" (x).

Between the ages of 11 and 12, the child in a public elementary school completes the primary stage of his education in the junior school and then proceeds to a new school of a post-primary kind. Some children at this age pass to secondary or grammar schools, the remainder to other post-primary schools adapted so far as is possible to their special needs. The variety of the provision made for the post-primary education of children not transferred to secondary schools illustrates the elasticity of the English educational system. Some authorities organise a large portion of their provision for post-primary education on a selective basis; others apply the principle of selection only to secondary and junior technical and trade schools and organise all their post-primary schools falling within the category of elementary schools on the non-selective basis. In most areas there is a mental stocktaking (usually by means of an examination) in the public elementary schools at or about the age of 11. The brightest children are generally transferred to secondary schools; the destination of the others depends upon the policy of the particular authority with regard to post-primary schools. In the more progressive areas the alternatives are (1) the selective central school, providing an organised course of instruction from 11—16, sometimes not very different from the normal secondary school course, (2) the non-selective senior or modern school organised on the basis of a school life of three or four years from the age of 11, with parallel courses suited to the aptitude of the different types of children, and (3) the junior technical or trade school to which children are admitted for a two or three years' course at or about 13 years of age. The grouping of the older children in rural areas presents special difficulties

(u) Board of Education Report of the Consultative Committee on Infant and Nursery Schools, 1933, § 88.

(x) Board of Education, Educational Pamphlet No. 60, p. 2.

which are to an increasing extent being overcome by taking advantage of improved transport facilities.

This reorganisation of schools into primary and post-primary schools represents one of the most important educational developments of the post-war period in England and Wales. Already approximately one-half the children are being educated in reorganised schools, and it may be anticipated that the process of reorganisation will be accelerated when the national financial conditions permit of the necessary expenditure upon new school buildings and equipment. [280]

**Nursery Schools and Classes.**—The parent's legal duty in regard to the education of his child begins from the age of 5 years. Children may, however, be admitted to public elementary schools under that age and in some areas, particularly in the poorer parts of large towns, they are encouraged for social and health reasons to attend from about 3 years of age. Special provision is made for them in nursery classes in the ordinary public elementary school. By sect. 21 of the Education Act, 1921 (*y*), local education authorities are empowered to provide or aid nursery schools for children between 2 and 5 years of age or such later age as may be approved by the Board of Education. Only a few authorities have taken advantage of this power and the number of nursery schools is comparatively small. Some have been provided by the local education authority; others by voluntary bodies. The nursery school is primarily designed for those infants who by reason of their unsuitable environment require careful attention to their physical welfare. Good food, fresh air, restful sleep, medical and nursing attention and play, rather than formal instruction, are the essential features of the nursery school. See also the title EDUCATION SPECIAL SERVICES. [281]

**Secondary Schools.**—No school in the English system of education possesses such a variety of types as the secondary school. Most of them, however, share the general character of the secondary school as defined by the Board of Education in their Grant Regulations, viz. a school for pupils who intend to remain for at least four years and up to at least the age of 16, providing a progressive course of general education of a kind and amount suited to an age range of at least from 12 to 17 years (*z*). They include the grammar schools of old foundations, some of which have been taken over by the local education authorities during the present century, and may have both boarders and day scholars; and the day schools founded by such voluntary bodies as the Girls' Public Day School Trust, which originally received no grants from public bodies, but which has since qualified for or accepted aid from the local education authorities and the Board of Education. In Wales and Monmouthshire, there are the intermediate schools established under the Welsh Intermediate Education Act, 1889 (*a*), and everywhere the large and increasing number of county secondary schools directly provided by the county and county borough councils under the powers first conferred by the Education Act, 1902. Thus the system of publicly provided secondary schools in England is only some 30 years old, and its rapid development is an educational achievement of which the nation may be justly proud.

(*y*) 7 Statutes 140.

(*z*) Board of Education Regulations for Secondary Schools; S.R. & O., 1932, No. 937.

(*a*) 7 Statutes 265.

The private school system includes on the one hand the great Public Schools—most of them boarding schools—which accept no financial aid either from the Board of Education or the local authorities, and which depend partly upon the fees charged to the pupils and partly upon endowments, and, on the other hand, a large number of day or boarding schools, of all sizes and degrees of efficiency which for the most part are run by their proprietors for private profit.

Every secondary school which is in receipt of government aid is inspected by the Board of Education. Many local education authorities arrange, in addition, for the periodical inspection of the secondary schools which they themselves maintain or aid. The Board publish a list of schools (*b*) which have been inspected and are regarded as efficient, and the list includes, in addition to the grant-aided secondary schools, a large number of secondary schools not in receipt of grant who have applied to the Board for inspection, and after inspection have been considered efficient. [282]

The usual age of admission to the maintained or aided secondary school is between 11 and 12 years of age, but some of these schools have preparatory departments attached to them which receive children between 8 and 11 years of age. These preparatory schools may be inspected by the Board and recognised as efficient, but they do not receive any grant.

To qualify for grant, the secondary school must offer annually a minimum number of places, called special places, to pupils from public elementary schools. These places are generally awarded on the results of competitive examinations and entitle the holders either to a free place or to a partial remission of fees, provided the circumstances of their parents warrant assistance from public funds.

The tuition fees in publicly aided secondary schools vary considerably. Until recently, in a few areas, no fees were charged in the secondary schools provided by the local education authority, but since 1933, under the pressure of the national financial conditions, the Board of Education have insisted upon fees being charged in all maintained secondary schools and upon an upward revision of the fees in the case of schools charging low fees. The average fee now charged in these schools is stated to be from £10 to £12 a year, but the average fee is considerably lower in Welsh secondary schools.

Admission to a secondary school, whether as a fee-paying or non-fee-paying pupil, is generally subject to an agreement on the part of the parent to keep the child at the secondary school for three full years, or until the end of the term following his 16th birthday, whichever is the longer period.

Without laying down any uniform curriculum for grant-aided secondary schools, the Board of Education make certain general requirements as to the subjects to be taught. Normally the curriculum includes instruction in the English language and literature, at least one foreign language, geography, history, mathematics, science, drawing, singing, manual instruction for boys, domestic subjects for girls, and in physical exercises and organised games. It is customary for pupils to take an examination, generally called the "School Certificate Examination" or "First Examination" at or about the age of 16 years. Pupils who remain at school for a further two years take an advanced course leading to the "Higher Certificate Examination" or

"Second Examination," or they pursue some other special course, not necessarily leading to an external examination, which has a bearing upon their future career. [283]

**Continuation Schools.**—An attempt was made by sect. 3 of the Education Act, 1918 (c), to establish a system of compulsory part-time continuation schools providing "courses of study, instruction and physical training" for all young persons who were placed under the obligation to attend such schools by the Act. To succeed, the attempt should have been made on a regional, if not a national, basis. In practice the initiative was left to the local education authorities. A few authorities, including the L.C.C., introduced the new system, but owing to financial and other considerations their example was not followed. London had to abandon the policy of compulsion and ran their continuation schools on a voluntary basis. A continuation school at Rugby is now the sole surviving example of the compulsory continuation schools contemplated by the Education Act of 1918. See also the title **CONTINUATION SCHOOLS**. [284]

**Vocational Training and Further Education.**—Elementary and secondary schools provide in the main a general education not related to any specific type of employment. There is, however, a wide variety of instruction, apart from that given at the Universities, available for boys and girls after leaving the elementary or secondary school. This instruction is provided in polytechnics, technical colleges, schools and institutes, schools of commerce, art schools and classes, evening institutes, etc. Although a million persons avail themselves of these facilities, they represent only a small proportion of the youth of the country.

Nearly all these institutions are grant-earning and provided by the local education authorities. Part of the field of vocational education, is, however, occupied by private enterprise. A number of commercial schools and colleges offer facilities for instruction in commercial subjects, mainly shorthand and typewriting. Some of the larger industrial and commercial firms have carefully organised schemes of technical instruction for their apprentices and other youthful employees.

The system of technical and further education is somewhat incoherent, and only a portion of it can be described in terms of a national scheme. It varies considerably in range and efficiency in different parts of the country. It is most complete in the large industrial and commercial centres where it has been developed in response to local demands.

The following facilities are provided over a fairly wide area : (a) Research facilities for advanced students. (b) Full-time senior day courses extending from 1 to 5 years for students from about 17 years of age entering generally from secondary schools or their equivalent, who will pass into industry or commerce. (c) Part-time senior day courses for students of 16 years and over who are engaged in industry or commerce. (d) Senior evening courses for students in industrial and commercial employment who have already passed through secondary schools, junior technical schools, central schools or evening institutes. (e) Junior evening classes in continuation schools or evening institutes for students in employment who have had an elementary education only. (f) Full-time junior day courses in

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(c) Repealed and replaced by s. 75 of the Education Act, 1921 ; 7 Statutes 170.

technical, commercial or art schools for students from 11 or 13 to 16 years of age who will pass directly into industry or commerce. (g) Part-time junior day courses for apprentices or others from 14 to 16 years of age who are released by their employers for one or two half-days per week. [285]

The vocational training given in technical colleges is, in the main, undertaken concurrently with employment and usually in the evenings of the winter months. Recent years have, however, seen a considerable growth in the number of part-time day students, mainly due to the action of public-spirited employers, who allow their apprentices and other employees time to attend classes at the local technical schools on two or three working days each week.

There has also been a growth in the number of full-time junior day courses in technical, commercial and art schools. These courses are generally held at junior technical, commercial or art schools, some of which are sometimes known as trade schools and are, in most cases, of two or three years' duration (13 to 15 or 16). In the first year, the emphasis is placed on the more general educational subjects; in the later years, on subjects of a practical character related to the particular industry or group of industries with which the school is associated. These schools provide a type of training which has proved acceptable in some industries as an alternative form of apprenticeship, and though of comparatively recent origin they now have an established place in the educational system and form a valuable reservoir of intelligent recruits for the more skilled branches of industry and commerce.

A large variety of examinations are taken by students in technical, commercial and art schools and in evening institutes. Examinations are held for such students by such bodies as the Royal Society of Arts, the London Chamber of Commerce, the City and Guilds of London Institute, and regional examination bodies of which the Union of Lancashire and Cheshire Institutes is an example. Professional bodies, such as the Institute of Bankers, and the Institute of Chartered Accountants, conduct examinations relating to entry to and promotion in these professions. The Board of Education hold examinations in art.

Reference should also be made to the schemes for the award of national certificates which have been established by the Board of Education in co-operation with the professional institutions concerned. The schemes already cover mechanical, electrical, gas and automobile engineering, the building trades and naval architecture, and will shortly include a national certificate in commerce. These schemes have two advantages—they promote the development of systematic and grouped courses of study, and the national certificates, bearing the endorsement of the professional institution as well as of the Board of Education are a useful qualification. For training courses in connection with unemployment see title UNEMPLOYMENT. [286]

**Non-Vocational Education.**—Side by side with the system of vocational training and further education there exists a fairly considerable provision for the liberal, practical and recreational instruction of older persons. In this field there is still much voluntary and experimental work. "Adult Education" is by no means a recent development. University Extension Lectures have been a recognised method of adult education since 1873. A later innovation is the tutorial class system of the Workers' Educational Association, an Association which works in conjunction with the local Universities by

means of joint committees and endeavours to promote the higher education of adult members of the working classes. The joint committees provide three-year tutorial classes of a standard roughly equivalent to an Honours degree course. Preparatory classes, usually of one year's duration, are also provided by the same committees. Such activities are eligible for aid under the Regulations for Adult Education (d).

Much educational work of a useful kind is promoted by University and other Settlements, Rural Community Councils, the National Federation of Women's Institutes, the National Adult School Union, the Young Men's and Young Women's Christian Associations and similar bodies.

There are also a few Colleges of Adult Education, the best known being the Working Men's College and the Morley College, both in London.

The London Education Committee have evolved a type of evening institute in which lecture courses and recreational facilities are provided for adolescents and adults. [287]

**Training, Employment and Superannuation of Teachers.**—The efficiency of the educational system depends very largely upon the existence of a competent body of teachers, and the recruitment and training of teachers is therefore one of the most important tasks of the Board of Education and the local education authorities. Teachers in public elementary schools must possess such qualifications as are recognised by the Board of Education, and fall into three main categories—certificated teachers (about 75 per cent. of the wholenumber), uncertificated teachers, and qualified teachers of such special subjects as manual training and domestic subjects. Certificated teachers hold a teaching certificate or diploma awarded, in the case of recent entrants to the profession, only to teachers who have satisfactorily completed a course of training of not less than two years' duration in a recognised teachers' training college, or the teachers' training department of a recognised University. Uncertificated teachers are normally teachers who have passed an approved examination of about the standard of the School Certificate Examination. Teachers of special subjects receive their training in a training college or department specialising in the particular subjects which the teacher intends to teach.

The proportion of uncertificated teachers is diminishing rapidly owing to the general acceptance of the teacher's certificate as the minimum standard of qualification for the practice of the teaching profession. There still exists, however, a considerable number of teachers called supplementary teachers, who have no professional training or defined qualification and who are employed usually to teach the younger children in the rural schools.

Unlike teachers in public elementary schools, teachers in grant-aided secondary schools are not required by statute or regulation to have any specific qualifications. In practice, however, a high standard of academic attainment and professional efficiency is maintained in these schools by the regulation of the Board of Education which requires that the teaching staff of such schools must be suitable. Naturally a large proportion of the teachers in secondary schools are graduates of recognised Universities and an increasing proportion hold professional

certificates or diplomas as well as Honours degrees. It is something of an anomaly that a graduate without a professional diploma is eligible for employment at the graduate scale of salaries in a grant-aided secondary school, but ranks as an uncertificated teacher if employed in a public elementary school. [288]

The salaries of teachers in full-time employment in all types of grant-aided schools are now regulated by national scales, generally called the Burnham Scales, from the fact that the late Lord Burnham was for many years the chairman of the standing joint committees which formulated them.

They are devised on a regional basis. The scales for teachers in elementary schools provide for four different rates of remuneration, the highest being assigned to the Greater London area in which the cost of living is considered to be highest, and the lowest to the rural districts of the country. The scales for teachers in secondary, technical and art schools provide for one scale of salaries for teachers in the London area, and a lower rate of remuneration for teachers employed in the provinces. Graduate teachers naturally receive a higher rate of remuneration than non-graduate teachers.

The scales are subject to revision from time to time, and are operative for such periods as may be agreed between the parties concerned.

The Board of Education take no official responsibility for the scales, but the concurrence of the Board is always sought in connection with the findings of the standing joint committee in order that the scales may subsequently be recognised by the Board of Education for grant purposes.

The concurrence of the Board is essential for another reason. Teachers in the full-time service of the local education authorities, and of the managers and governing bodies of certain types of schools, are eligible for superannuation and other benefits under the Teachers (Superannuation) Act, 1925 (e). The scheme is a contributory one; a deduction of 5 per cent. is made from the teacher's salary and, in the case of local education authorities, an equivalent contribution (one-half of which is recoverable, under present arrangements in the form of grant) is made by the employing authority (f). Benefits under the Act are calculated in accordance with years of service and approved average salary during the last five years of service (g). No difficulty arises as to the amount of salary to be reckoned for the purposes of deductions or superannuation and other benefits, provided it is calculated in accordance with the Burnham Scales. [289]

**Aid to Students.**—Sect. 11 of the Education Act, 1921 (h), contemplates "a national system of public education available for all persons capable of profiting thereby" and sect. 14 (4) of the Act (i) lays upon local education authorities the duty, in preparing schemes under the Act, of securing "that children and young persons shall not be debarred from receiving the benefits of any form of education, by which they are capable of profiting, through inability to pay fees." This duty naturally entails the formulation by the local education authorities of comprehensive schemes of financial assistance for students in need of such help.

(e) 7 Statutes 317.

(g) *Ibid.*, s. 10 (2); 7 Statutes 326.

(i) *Ibid.*, 136.

(f) Act of 1925, s. 9; 7 Statutes 325.

(h) 7 Statutes 135.

The schemes of assistance vary considerably in different localities, but the following features are common to most of them : (1) All scholarships or other forms of financial assistance are awarded subject to evidence of need. (2) Free places in secondary, technical, etc., schools are not usually supplemented by maintenance grants until the student becomes a potential wage-earner, *i.e.* at 14 years, the statutory school-leaving age for the public elementary school. (3) Maintenance grants are usually augmented in the later years of school life in order that pupils may be encouraged to remain longer at school. (4) Major scholarships or exhibitions are available to enable the ablest students to proceed to the Universities and other institutions for higher education. (5) As an alternative to scholarships and exhibitions, in the case of intending teachers proceeding to Universities or training colleges, many authorities have instituted a system of loans available free of interest, and repayable by instalments within a prescribed period after the completion of the course. **[290]**

**School Medical Service and Special Schools.**—The close connection between mental, physical and moral health has long been recognised, and it is not surprising that around the modern educational system there has grown up a network of social and medical services.

By sect. 80 of the Education Act, 1921 (*k*), local education authorities are required to provide for the periodical medical inspection of all children in public elementary schools. Children are examined not less than three times during the school life : (1) on entering school, (2) at the age of 8 years, and (3) at the age of 12. The parents are informed of any defect which may be found, and if they are unable to obtain treatment, this is provided by the authority for certain kinds of defect or ailment, *e.g.* minor ailments, defects of eyes or teeth and enlarged tonsils and adenoids. The parents contribute under sect. 81 of the Act towards the cost of this treatment according to their means. Some authorities provide treatment for other forms of physical defect, *e.g.* crippling defects, heart-disease, rheumatism, etc. The work of medical inspection and treatment is carried out by the local education authorities by or under the supervision of their medical staff and under the general supervision of the Board of Education to whom the Minister of Health has delegated his responsibility under sect. 80 of the Act of 1921.

In institutions for higher education the statutory position is somewhat different. The provision of facilities for medical inspection is mandatory in regard to secondary and continuation schools for which the local education authorities are directly responsible and permissive in certain other schools (*l*). Arrangements for the medical treatment of children in schools other than elementary may be made at the discretion of the authority.

Local education authorities are required by Part V. of the Education Act, 1921 (*m*), to provide for the suitable education in special schools of blind, deaf, physically defective, mentally defective and epileptic children in their area. For blind children the age of obligation to attend school is from 5—16 years, and for other defective children 7—16 years (*n*). In the more populous areas provision is made for a

(*k*) 7 Statutes 174.

(*l*) See Act of 1921, s. 80 (2) (3); 7 Statutes 174, 175.

(*m*) 7 Statutes 159.

(*n*) Act of 1921, ss. 51, 53, 61; 7 Statutes 159, 160, 165.

large proportion of these children by means of day schools appropriate to the particular defect. Children resident in other areas have to receive their treatment and education in residential special schools. A considerable proportion of the special schools are provided by voluntary bodies and receive grants from the Board of Education under the Special Services Regulations (o).

In some institutions there is provision for full-time courses of industrial training for such classes of defectives over 16 years of age as deaf or blind children. [291]

**The Universities.**—There are now twelve Universities in England and Wales which have the power to grant degrees, and three University Colleges which do not possess that power. In addition, Lampeter College in Wales, a small college, mainly an ecclesiastical foundation, has the right to give degrees.

The Universities of Oxford and Cambridge are the older Universities of the country; the new Universities, generally termed the modern Universities, have received their charters in the course of the last 100 years. Whilst the older Universities are residential, the modern Universities are generally non-residential.

Some of the Universities (*e.g.* London, Durham and Wales) consist of groups of constituent colleges in which teaching and research are conducted, the degrees being granted by the Universities.

The Universities and University Colleges are self-governing institutions. They receive yearly grants from the Treasury who act upon the advice of the University Grants Committee, an *ad hoc* body not officially connected with the Board of Education. The Board's official interest in the Universities is confined to the work done in them in connection with the training of teachers, a service in respect of which grants are payable by the Board under the Regulations for the Training of Teachers (p). The Board also have a direct interest in the progress of a large number of university students who hold State scholarships awarded on the results of the Higher Certificate Examinations to pupils attending grant-aided secondary schools.

University degree courses generally extend over three or four years, though in medicine, five or six years are necessary. In general, degree examinations are taken in two stages. All the Universities undertake post-graduate and research work, and an increasing proportion of students proceed to higher degrees. [292]

**London.**—A note on the position in London will be found at the end of each of the special titles which are referred to at the beginning of this article. [293]

(o) Board of Education: Special Services Regulations, 1925; S.R. & O., 1925, No. 835; 1931, No. 184; 1932, No. 19.

(p) Board of Education Regulations for the Training of Teachers; S.R. & O., 1932, No. 1100; as amended by S.R. & O., 1933, No. 441.

## EDUCATION AUTHORITY

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**Central Authority.**—The expression “Local Education Authority” (usually abbreviated to “L.E.A.”) is one which is in constant use in the administration of public education. Although the central authority for education in England and Wales is the Board of Education, this body is, in practice, seldom referred to as “the central authority” but is usually spoken of as “the Board.”

Of the two types of education authority—central and local—the latter only is accordingly meant when in conversation or correspondence the term “education authority” is used. See title **BOARD OF EDUCATION**. [294]

**Local Education Authorities.**—For administrative purposes local education authorities are of two classes, namely those for elementary and those for higher education.

*For Elementary Education.*—Local education authorities for elementary education (frequently called “Part III. Authorities,” as elementary education was dealt with in Part III. of the Education Act, 1902) (a), are defined by sect. 3 of the Education Act, 1921 (b), as being the councils of counties (for counties excluding the areas of boroughs or urban districts the councils of which are the authorities) and county boroughs, the councils of boroughs with a population of over 10,000 according to the census of 1901, and the councils of urban districts with a population of over 20,000 according to the census of 1901.

In order to prevent the formation of a large number of new local education authorities as a consequence of the creation of new boroughs or urban districts or the extension of the boundaries of existing boroughs or urban districts made for example under sect. 46 of the L.G.A., 1929 (c), on the first general review of areas by county councils, the Education (Local Authorities) Act, 1931 (d), provides that no council of an urban district or a borough which was not a local education authority for elementary education on March 3, 1931, shall become one, unless expressly constituted as such by a subsequent Act of Parliament. But in the event of two or more urban districts being united, the council of the urban district formed by the union will be the local education authority for elementary education, if the council of one of them was a local education authority before the union.

So far as county councils are concerned, they are local education authorities for elementary education for the county, excluding, of course,

(a) 2 Edw. 7, c. 42. Repealed by the Education Act, 1921.

(b) 7 Statutes 131.

(c) 10 Statutes 916.

(d) 24 Statutes 173.

the area of any borough or urban district, the council of which is a local education authority for elementary education (e).

A non-county borough council or U.D.C. may, by agreement with the county council and with the approval of the Board of Education, relinquish in favour of the county council their powers and duties as a local education authority (f). [295]

*For Higher Education.*—Local education authorities for higher education (frequently referred to as "Part II. Authorities" as higher education was dealt with in Part II. of the Education Act, 1902) are the councils of county and county boroughs for their respective areas (g).

Although the council of a non-county borough or urban district cannot be a local education authority for higher education, they have a concurrent power of raising by rates a sum not exceeding the produce of a penny rate for the purpose of supplying or aiding higher education (h).

In practice there is considerable co-operation between Part II. and Part III. authorities in the administration of higher education. [296]

**London.**—The L.C.C. are the local education authority under sect. 3 of the Education Act, 1921 (i), for the whole area of the administrative County of London (including the City of London) for the purposes of both elementary education and higher education. The term "borough" used in that section does not cover either the City of London or a metropolitan borough. See sect. 15 of the Interpretation Act, 1889 (k). [297]

(e) S. 3 of the Education Act, 1921; 7 Statutes 131; as amended by s. 1 (2) of the Act of 1931; 24 Statutes 173.

(f) Education Act, 1921, s. 5 and Sched. II.; 7 Statutes 133, 218.

(g) Act of 1921, s. 3 (2); 7 Statutes 131.

(h) *Ibid.*, s. 70 (2); 7 Statutes 168. A Board of Education grant is not paid on this expenditure. This limit was raised by 33½ per cent. as from October 1, 1929, by the provisions of the L.G.A., 1929, s. 75; 10 Statutes 932.

(i) 7 Statutes 131.

(k) 18 Statutes 998.

## EDUCATION, BOARD OF

*See BOARD OF EDUCATION.*

## EDUCATION COMMITTEE

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*See also titles :* COMMITTEES ;  
 \* EDUCATION ;  
 JOINT ACTION ;  
 JOINT BOARDS AND COMMITTEES.

\* Reference should be made to this title for a list of the articles on educational subjects, see p. 137 *ante*.

**Constitution.**—By sect. 4 (1) of the Education Act, 1921 (*a*), every council which has powers under that Act must have an education committee or committees constituted in accordance with the provisions of the Act, but a council having powers as respects higher education only is not bound to have an education committee if they decide that an education committee is unnecessary in their particular case.

An education committee must be constituted in accordance with a scheme made by the council and approved by the Board of Education (*b*). When a scheme has been approved, it has effect as if it were enacted in the Act, and if it is revised or altered by another scheme, then the new scheme has the same effect as the original scheme (*c*).

By para. (1) of Part I. of the First Schedule to the Act of 1921 (*d*), every scheme constituting an education committee must provide for the appointment by the council of at least a majority of the committee. The members so appointed must be persons who are members of the council, but a county council may relax this rule if they so determine.

The scheme must also provide for the appointment by the council of persons of experience in education and of persons acquainted with the needs of the various kinds of schools in the area for which the council act (*ibid.*). Where it appears desirable, these appointments may be

(*a*) 7 Statutes 132.

(*b*) Education Act, 1921, s. 4 (3) ; 7 Statutes 132.

(*c*) *Ibid.*, s. 4 (4).

(*d*) 7 Statutes 217.

made on the recommendation or nomination of other bodies, including associations of voluntary schools (*ibid.*).

Provision in the scheme must also be made for the inclusion of women as well as men among the members of the committee (*ibid.*).

Separate education committees for areas within a county, or joint education committees for a combination of counties, boroughs, urban districts or parts thereof may be formed, if the necessary provision is made in a scheme (e). If there are joint committees, the scheme must indicate the proportions in which expenditure on matters referred or delegated to them are to be borne by the constituent councils. It is sufficient if a majority of the members of a joint committee are appointed by the councils of the counties, boroughs or districts represented thereon.

Before the Board of Education approve a scheme, they may take whatever steps they consider expedient to give the scheme publicity, and before approving a scheme which provides for the appointment of more than one education committee, they must be satisfied that due regard has been paid to the general co-ordination of all forms of education (f). [298]

**Qualifications of Members.**—Part III. of the First Schedule to the Education Act, 1921 (g), prescribed the qualifications of members of education committees, but this Part of the Schedule has been repealed (except as to London) by the L.G.A., 1933. In sects. 57, 59 of this Act (h) are set out the various qualifications and disqualifications for election or holding office as a member of a county council, borough council or district council.

Sect. 94 of the Act (i) also provides that a person who is disqualified for being elected or for being a member of a council is also disqualified for being a member of a committee or sub-committee of that council, or for being a representative of that council on a joint committee appointed by two or more councils. This applies whether the committee, sub-committee or joint committee is appointed under the Act of 1933 or any other enactment—such as the Education Act, 1921. By the proviso to sect. 94 a teacher who holds office in a school or college which is aided, provided or maintained by a local authority is not on that ground alone disqualified for being a member of an education committee, or a committee for the care of the mentally defective or a committee under sect. 15 of the Public Libraries Act, 1892 (k), appointed by that authority.

In addition, sect. 94 of the Act of 1933 extends to members of a committee, sub-committee or joint committee, the provisions of sect. 84 of the Act (l) which allow legal proceedings to be instituted in the High Court or before the justices against a member of a council or mayor of a borough, on the ground that he is disqualified for so acting, and in the High Court on the ground that the member or mayor claims to act as such without having so acted. Legal proceedings under sect. 84 of the Act can only be instituted by a local government elector for the area of the local authority concerned (m), and in relation to an education committee, sub-committee or joint committee the area for which they act must apparently be substituted. [299]

(e) Sched. I., Part I., r. (2); 7 Statutes 217.

(f) *Ibid.*, r. (3).

(g) 7 Statutes 218.

(h) 26 Statutes 333, 334.

(i) *Ibid.*, 356.

(k) 13 Statutes 856.

(l) 26 Statutes 350.

(m) See s. 84 (5); 26 Statutes 351.

**Powers of an Education Committee.**—By sect. 4 (2) of the Education Act, 1921 (*n*), all matters relating to the exercise of a council's powers under that Act or any powers connected with education conferred by or under any other Act, scheme or order on the council as local education authority stands referred for consideration to the education committee. The power of raising a rate or borrowing money is, however, excluded. Before exercising any of their powers in connection with education, a council must receive and consider a report of the education committee with respect to the matter, unless in their opinion the matter is urgent (*ibid.*). [300]

**Powers Delegated to an Education Committee.**—It has been pointed out (*supra*) that every educational matter stands referred to the education committee, except the raising of a rate or the borrowing of money, though in matters of urgency the council *may* act without awaiting the report of the committee. Also the council *may* delegate to the education committee, with or without restrictions or conditions, any of their powers under the Education Acts, but they *must not* delegate power to raise a rate or to borrow money (*ibid.*).

The practice of local education authorities in delegating powers differs very considerably ; in some areas there is no delegation at all, whilst in others, all powers allowed by the Act to be delegated are shed. Between these extremes lie a number of instances, as in non-county boroughs and urban districts where the volume of business is not great, and the retention of powers by the council is favoured. In such cases the education committee merely discuss matters and report on them to the council.

Authorities for populous areas, on the other hand, owing to the volume of business, are almost bound to delegate to their education committee a large measure of responsibility. This applies particularly, perhaps, to the counties and county boroughs. But some large authorities prefer to reserve to themselves certain powers, and so it is sometimes found that the delegation to the education committee consists of all the powers of the council under the Education Acts and the Public Libraries Acts except, for instance, some of the following powers : (i.) the appointment of officers other than teachers, caretakers, grounds-men and clerical assistants in secondary schools, (ii.) the compensation of officers, (iii.) the adjustment of property and liabilities, (iv.) the provision of new schools, (v.) the acquisition, appropriation and alienation of land, (vi.) increases in salaries of the chief officers of the committee, and, of course, (vii.) the power of raising a rate or of borrowing money. [301]

It also frequently happened that powers under the Children Act, 1908 (*o*), were also delegated to the education committee. Many of the powers and duties created or re-enacted by the Children and Young Persons Act, 1933 (*p*), are exercised by a council as the local education authority, but in the case of the councils of counties or county boroughs their powers as local authorities for dealing with "young persons" (*i.e.* those juveniles who are over the age of 14) (*q*) may be exercised by the council, either through an existing committee or through a special committee. Thus the provision of remand homes and "approved" schools (formerly "Reformatory Schools") would come under this

(*n*) 7 Statutes 132.

(*p*) 26 Statutes 168.

(*o*) 9 Statutes 795.

(*q*) S. 96 ; 26 Statutes 232.

heading. The Home Office have expressed the opinion that it would be desirable for local authorities to agree that the responsibility of providing remand homes should be assumed by the education authority (r).

Sect. 9 of the Education Act, 1921 (s), provides that the county councillors elected for an electoral division consisting wholly of a borough or urban district whose council are a local education authority for the purpose of elementary education, or of some part of such a borough or district, must not vote in respect of any question arising before the county council which relates only to elementary education. Apparently this section does not extend to voting at a meeting of an education committee even where the power to decide the question has been delegated to the education committee by the council under sect. 4 (2) (b) of the Act of 1921 (t).

Similarly the more general provision in the proviso to sect. 75 of the L.G.A., 1933 (u), should apparently be read as extending only to voting at a meeting of the county council, seeing that the disability for voting on account of interest in contracts imposed by sect. 76 of the Act (a) is expressly extended to members of committees, sub-committees or joint committees by sect. 95 of the Act (b), but no such extension of sect. 75 is made. See also title COMMITTEES, Vol. 3, at p. 270. [302]

**Functions of an Education Committee.**—As all matters relating to the exercise of a council's powers under the Education Act, 1921, must (except in cases of urgency) be referred to their education committee, it follows that the function of the education committee is to deal with all matters concerned with the administration of education for the area. This means that county and county borough education committees will deal with both higher (*i.e.* secondary and technical) and elementary education, whereas non-county borough and urban district education committees will deal only with elementary education.

Where there has been partial or complete delegation of powers to the education committee, the committee may themselves make decisions which immediately become effective. But in so far as matters are not delegated to the education committee, the function of the committee is to consider and report to the council, with whom the final decision will rest. In these cases, the council may adopt a recommendation of the education committee, refuse to adopt it, substitute some other decision, or refer the matter back for further consideration.

Sect. 5 (1) of the L.G.A., 1929 (c), required county and county borough councils in preparing their schemes for the administration of poor law functions to have regard to the desirability of securing that, as soon as circumstances permitted, all assistance which could lawfully be provided otherwise than by way of poor law assistance should be so provided. It was thus made possible for a council to include in their scheme a declaration that any assistance that could be provided by virtue of (*inter alia*) any of the following Acts : the Mental Deficiency Acts, 1913 to 1927 (d), the Education Acts, 1921 to 1933 (e), the Blind

(r) Home Office letter (657, 908/1), dated January 19, 1933.

(s) 7 Statutes 135.

(u) 26 Statutes 846.

(b) *Ibid.*, 357.

(d) 11 Statutes 160, 200.

(t) *Ibid.*, 132.

(a) *Ibid.*

(c) 10 Statutes 885.

(e) 7 Statutes 130, 26 Statutes 130.

Persons Act, 1920 (f), should be provided exclusively by virtue of these Acts and not by way of poor relief.

When such a declaration had been made, it would, for example, enable domiciliary assistance to blind persons to be administered under the Blind Persons Act, 1920 (when the education committee carry out duties under that Act), and the education of blind, deaf, defective and epileptic children to be dealt with under Part V. of the Education Act, 1921 (g), in the case of destitution, instead of being dealt with under the poor law. [303]

**Sub-Committees.**—The volume of business with which an education committee are called upon to deal renders it imperative that the work shall be divided and dealt with by suitable sub-committees. Provision for this is made in sect. 4 (5) of the Education Act, 1921 (h), whereby an education committee may, subject to the directions of the council, appoint so many sub-committees, consisting wholly or partly of members of the committee, as the committee think fit.

The number of sub-committees and the matters which are to be referred to them for consideration will, of course, differ in various localities, but in general will depend upon the volume of normal work and the nature of the area for which the authority are responsible.

Some or all of the following sub-committees will be found to be advisable :

(1) Elementary Education Sub-Committee. (2) Secondary Schools Sub-Committee. (3) Technical Education Sub-Committee. (4) Blind Persons Act Sub-Committee (where the duties under the Blind Persons Act are delegated to the Education Committee). (5) Sites and Buildings Sub-Committee. (6) Finance and General Purposes Sub-Committee. (7) Books and Apparatus Sub-Committee.

There is, of course, considerable variety in the matters which are dealt with by committees and sub-committees, so that it is impossible to give any uniform practice, but the following indicates what may, and frequently is, included in the duties for which a sub-committee are responsible :

(1) *The Elementary Education Sub-Committee.*

- (a) The general needs of the area as regards elementary education.
- (b) The furnishing, equipping, organisation and staffing of elementary schools.
- (c) The consideration of recommendations of managers and local committees.
- (d) The consideration of matters relating to teachers, caretakers and cleaners.
- (e) The conduct of correspondence with the Board of Education.
- (f) The supply of books, stationery, apparatus, and equipment for schools.
- (g) The supply of coal, coke, fuel, cleaning materials.
- (h) The examination and passing of accounts.
- (i) The preparation of reports to the education committee.
- (j) The education of blind, deaf, defective and epileptic children.
- (k) School medical service and the provision of meals.
- (l) The consideration of matters arising out of the Children and Young Persons Act, 1933. Some of the larger authorities refer all social questions relating to children to a Children's Care Sub-Committee. [304]

(2) *The Secondary Schools Sub-Committee.*

- (a) The consideration of the general needs of the area as regards education other than elementary or technical, if there

is a Technical Sub-Committee. (b) The consideration of matters (b), (d), (e), (f), (g), (h), (i) of the work of the Elementary Education Sub-Committee so far as they apply also to higher education. (c) The consideration of the reports and recommendations of governing bodies of schools, etc. (d) The administration of the council's scheme for aiding by scholarships, grants, etc., children and students receiving higher education.

**[305]**

(3) *The Technical Education Sub-Committee.*

(a) The general needs of the area as regards technical (apart from secondary) education. (b) Such of the duties under (1) and (2) above as may apply to technical education. **[306]**

(4) *The Blind Persons Act Sub-Committee.*

The administration of the Blind Persons Act, 1920 (i).  
**[307]**

(5) *The Sites and Buildings Sub-Committee.*

All matters relating to the purchase of sites, the erection of schools, institutions, etc., and the maintenance, improvement and enlargement of such buildings.

Questions of policy, such as the advisability or not of erecting a school, are usually dealt with by the appropriate sub-committee, e.g. elementary, higher, technical. **[308]**

(6) *The Finance and General Purposes Sub-Committee.*

(a) The examination and passing of accounts for payment. (b) The preparation of estimates. (c) The general consideration of all the financial matters of the education committee. **[309]**

(7) *Other Sub-Committees.*

In order still further to divide the work involved, sub-committees of sub-committees are formed, such as the following :

*Sub-Committees of the Elementary Education Sub-Committee.*

(i.) Appointments Sub-Committee—which appoints head teachers of public elementary schools (provided); (ii.) Finance Sub-Committee; (iii.) Sub-Committee to hold inquiries into cases of dismissal of teachers; (iv.) Joint Advisory Committee—a panel of members of the education committee to meet a panel of equal number of teachers; (v.) School Attendance Sub-Committee.

*Sub-Committees of the Higher Education Sub-Committee.*

(i.) Sectional Sub-Committee—to deal with miscellaneous points referred to them for consideration and report; (ii.) Juvenile Employment Sub-Committee. **[310]**

**Policy of an Education Committee.**—It is almost impossible to reduce to a catalogue the factors that determine the policy of an education committee, but it would seem that the following in some cases must, and in others do in practice, play an important part in the formation of an education committee's policy.

(1) The policy imposed on the local education authority by the Board of Education. (2) The policy of the authority (*i.e.* the council) as distinct from the education committee. In

practice it not infrequently happens that these two bodies are not of the same mind on educational matters. (3) The educational policy of the political party that happens to be in the majority either on the council or the education committee. (4) The social conditions (*e.g.* poverty, unemployment, rural or industrial environment) of the area. (5) The financial conditions obtaining in the area or the county. The pressure exerted by Ratepayers' Associations, etc., to keep the rates low, has undoubtedly some effect on local expenditure and consequently upon social services, including education. (6) The education, politics, experience and prejudice of individual members of the committee. (7) The educational tradition of the committee. Some committees have, over a large number of years, created a tradition of being "progressive" or "retrograde" in educational matters, and there seems to be a tendency to follow such a tradition. (8) There has been in recent years a genuine attempt to administer the education service in such a way that political influence is reduced to a minimum, that is to say the "continuity of policy" theory has been given prominence. No administrator, it is felt, will deny the advantage of being able to look ahead for a reasonable number of years, and to plan accordingly with the assurance that the educational policy of the country in general and his area in particular will undergo no great changes. The experience of these last few years has not, unfortunately, facilitated a continuity of policy, for probably the most potent factor of all is the Treasury control over expenditure and this is bound to reflect the financial and political considerations of the day.

It can hardly be denied that locally the policy of an education committee is, to a great extent, determined by the personnel of that committee. If it comprises people who are convinced of the value of education and who regard wise expenditure on it as a national investment, there is almost sure to be a practical policy of reasonable development. But if, on the other hand, the majority of the committee regard the education service as a local burden which has to be borne at as low a cost as possible, it usually follows that there will be found badly equipped schools, neglected buildings, disgruntled teachers and a low standard of educational attainment. [311]

**Proceedings.**—Part II. of the First Schedule to the Education Act, 1921 (*k*), prescribed rules for the conduct of an education committee's meetings, but has been repealed (except as to London) by the L.G.A., 1933, and the meetings and proceedings of local authorities and committees are now governed by sect. 75 and the Third Schedule to that Act (*l*).

The person presiding at a meeting of a committee or a joint committee appointed under the Education Act, 1921, or any other enactment has a second or casting vote (*m*).

If a local education authority have delegated any of their powers under the Education Act, 1921, to their education committee the acts and proceedings of the education committee as respects the exercise

(*k*) 7 Statutes 218.

(*l*) 26 Statutes 346, 495.

(*m*) L.G.A., 1933, s. 96 (2); 26 Statutes 357.

of the powers so delegated need not be submitted to the council for their approval (n).

The minutes of the proceedings of an education committee relating to powers delegated to them must be open to the inspection of any ratepayer at any reasonable time during the ordinary hours of business on the payment of a shilling. A ratepayer may make a copy of such minutes or take an extract therefrom (o). [312]

**Travelling Expenses of Members.**—Under sect. 294 of the L.G.A., 1933 (p), the necessary expenses incurred by members of a county education committee in travelling to and from meetings, or in travelling by the direction of the committee or the council for the purpose of carrying out any inspection necessary for the discharge of the committee's or council's functions, may be defrayed by a county council. But this allowance of travelling expenses only applies to members of any committee of a county council appointed for the discharge of functions throughout the whole area for which the county council is charged with those functions. Allowances may be made under similar conditions to members of sub-committees and joint committees (*ibid.*).

It should be noted that the payment of expenses under the L.G.A., 1933, is optional on the part of a county council, and members have no right to require repayment of their expenses.

By sect. 126 of the Education Act, 1921 (q), a council having powers under that Act may, subject to the regulations of the Board of Education (r), and certain conditions, defray any reasonable expenses incurred by them in paying subscriptions towards the cost of, or otherwise in connection with, meetings or conferences held for the purpose of discussing the promotion and organisation of education or educational administration, and the attendance at such a meeting or conference of delegates nominated by the council. [313]

**Admission of the Press.**—Duly accredited members of the press are entitled to be present at a meeting of a local education authority. This does not, however, apply to the general public who may only be admitted if the council think fit. Press representatives may be temporarily excluded if the meeting are of opinion that their exclusion is advisable in the public interest, having regard to the special nature of the business being or about to be dealt with (s).

The same right of admission of the press applies to meetings of an education committee, but only if they are dealing with matters which do not require the approval of the council, that is matters which have been delegated to them under sect. 4 (2) (b) of the Education Act, 1921 (t).

(n) Education Act, 1921, s. 4 (2) (b); 7 Statutes 132.

(o) *Ibid.*, s. 10. As to an inspection by an agent, see *R. v. Bedwellty U.D.C.*, *Ex parte Price*, [1934] 1 K. B. 333; Digest (Supp.).

(p) 26 Statutes 462.

(q) 7 Statutes 197.

(r) See S.R. & O., 1920, No. 1675.

(s) Local Authorities (Admission of Press to Meetings) Act, 1908; 10 Statutes 844.

(t) See definition of "local authority" in s. 2 of the Act of 1908, which includes not only councils of counties, boroughs, etc., but also education committees in so far as their proceedings are not required to be submitted to the council or councils for approval.

The right of the press to be present does not extend to attendance at a committee unless the committee is itself a local authority as defined in the Act of 1908. (See also title ADMISSION TO MEETINGS.) [314]

**Appearance in Legal Proceedings.**—Sect. 145 of the Education Act, 1921 (*u*), allowed a local education authority to appear in legal proceedings by their clerk or some authorised member of the authority. This section has been repealed (except in London) by the L.G.A., 1933, and sect. 277 of that Act (*a*) provides that a local authority may by resolution authorise any member or officer of the authority to institute or defend on their behalf proceedings before a court of summary jurisdiction. Any member or officer so authorised is entitled to institute or defend proceedings and to conduct them, although he is not a certificated solicitor. Included among the officers most concerned with the work of an education committee will be school attendance officers (now termed "school officers" by some authorities), appointed under sect. 149 of the Education Act, 1921 (*b*). It should be noted that the clerk must now be authorised as well as any other officer or member of the council, but a general authorisation will suffice. [315]

**Officers of an Education Committee.**—Sect. 148 of the Education Act, 1921 (*c*), empowers a local education authority to appoint necessary officers to hold office during the pleasure of the authority, and to assign to them such salaries or remuneration as they think fit. They may also remove any of their officers.

The Education Acts, 1921 to 1933, contain no definition of "officer" and the meaning of the term must be deduced from the context. As under sects. 148, 149 of the Act of 1921, the local education authority may appoint "necessary officers" and also school attendance officers, it would seem that the term is used in a wide sense, thus allowing for the appointment of administrative officers, clerks, attendants, messengers, caretakers, cleaners, etc. This is borne out by sects. 105—107 of the L.G.A., 1933 (*d*), which provide for the appointment of such officers as are necessary for the efficient discharge of the functions of a county, borough or district council.

It is, however, stipulated by sect. 118 of the Act of 1933 (*e*) that no specially designated officer (*e.g.* a school attendance officer) shall be appointed under that Act, if he could be appointed under the Education Act, 1921.

Some general provisions of the L.G.A., 1933, are referred to later which are expressed as applying to an officer of a local authority or an officer appointed or employed by a local authority, see *e.g.* sects. 120—122, 123 (2), referred to, *post*, on pp. 163, 164, 165. As by sects. 148, 149 of the Education Act, 1921 (*f*), the power of appointing officers is vested in the local education authority, and this power can only be exercised by the education committee as a consequence of delegation by the local education authority, it would appear that the provisions of the L.G.A., 1933, apply where the appointment is made by the education committee, unless a particular section is inconsistent with a provision of the Education Act, 1921. [316]

(*u*) 7 Statutes 204.

(*b*) 7 Statutes 205.

(*d*) 26 Statutes 361, 362.

(*f*) 7 Statutes 204, 205.

(*a*) 26 Statutes 452.

(*c*) *Ibid.*, 204.

(*e*) *Ibid.*, 369.

*Chief Officers.*—There is no uniformity of practice among local education authorities as to the designation of their executive officers for education. The title "Director of Education" seems to be growing in favour and in a number of instances is replacing that of "Secretary to the Education Committee." In a very few cases there are two officers, one being the director and the other the secretary. Yet a third designation is "Education Officer" or "Chief Education Officer."

There are still instances in which no chief education officer as such is appointed, and in these circumstances the duties of administering the educational service are usually combined with another office, such as that of town clerk or clerk of the council.

Apart from the title applied to the office, chief education officers may be placed in one of two categories, namely, those whose experience is solely clerical and those who have had teaching experience and who in most cases are graduates.

The present tendency appears to be to fill vacancies by appointing men (there have so far been, it is believed, no women chief officers) of the second category (g). [317]

*Assistant Officers.*—Most authorities for large areas appoint either deputy directors of education or assistant directors of education or assistant secretaries to the education committee. The number of these officers will naturally depend upon the volume of work devolving on the authority, but in large counties or county boroughs there are sometimes two or three assistant officers who are responsible to their chief for (i.) elementary, (ii.) secondary, and (iii.) technical education respectively. Some authorities combine secondary and technical education with one assistant officer for higher education.

Where there is more than one assistant officer, it is usual for one of these assistants—the senior in service perhaps—to act as deputy in the absence of the chief officer. [318]

*Tenure of Office.*—The security of tenure conferred on such officers as the clerk of a county council, a medical officer of health or the senior sanitary inspector (h) does not apply to the director of education or any members of his staff, or to a secretary to an education committee.

Sect. 121 of the Act of 1933 (i) remedies the defect in the law disclosed in *Brown v. Dagenham U.D.C.* (k), so that for officers appointed after June 1, 1934, notwithstanding any provision made in any enactment (l) that a person shall hold office during the pleasure of the local authority, there may be included in the terms on which he holds the office a provision that the appointment shall not be terminated by either party without giving to the other such reasonable notice as may be agreed, and where on June 1, 1934, an officer of a local authority held office upon terms which purported to include a provision that the appointment should not be terminated without each party giving to the other an agreed reasonable notice, that provision became valid as from that day. [319]

*Power of Entry.*—The officers of an education committee include in their work many duties other than those that are purely educational.

(g) See also title DIRECTOR OF EDUCATION.

(h) See L.G.A., 1933, ss. 100, 103, 110; 26 Statutes 359, 360, 364.

(i) 26 Statutes 370.

(k) [1929] 1 K. B. 737; Digest (Supp.).

(l) E.g. Education Act, 1921, s. 148; 7 Statutes 204.

For instance, if a justice of the peace is of opinion that there is reason to believe that the provisions of Part II. of the Children and Young Persons Act, 1933 (*m*) (which deals with the employment of children and young persons), or of a bye-law made thereunder are being contravened, he may by an order under sect. 28 of the Act addressed to an officer of the local authority (who, in the case where powers under this Part are exercised by the education committee, will be an officer of the education committee) empower the officer to enter the premises where the person is believed to be employed. Such an entry may be made at any reasonable time, but it must be within forty-eight hours of the making of the order. This applies also where a child or person is taking part, or believed to be taking part, in an entertainment or performance or being trained for such a purpose.

An officer authorised by the local authority may also, during the currency of a licence granted under sect. 22 or sect. 24 of the Act to a child taking part in an entertainment, enter any place where the licensed person is performing or being trained and may make inquiries (*ibid.*).

**[320]**

*Corrupt Practices.*—The Public Bodies Corrupt Practices Act, 1889 (*n*), renders liable to punishment as for a misdemeanor any officer of a public body (*o*) who corruptly solicits or receives for himself or for any other person any gift, loan, fee, reward or advantage as an inducement to, or a reward for, or otherwise, on account of any member, officer or servant of a public body doing, or forbearing to do, anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is concerned. See also the Prevention of Corruption Acts, 1906 and 1916 (*p*).

An officer must not under colour of his office or employment exact or accept any fee or reward whatsoever, other than his proper remuneration (*q*). (See also title CORRUPTION IN OFFICE.) **[321]**

*Members Appointed as Officers.*—A member of a local authority is disqualified from being appointed by that authority to any paid office (other than the office of chairman, mayor or sheriff) so long as he is a member of that authority and for a period of twelve months after ceasing to be a member (*r*). **[322]**

*Accountability of Officers.*—All officers of an education committee, in common with other officers of a local authority, must under sect. 120 of the L.G.A., 1933 (*s*), give a true account in writing of all moneys and property committed to their charge, and also full details with supporting vouchers of receipts and payments.

If an officer refuses or wilfully neglects to make any payment to the treasurer or otherwise as directed by the local authority, or if after three days' notice in writing signed by the clerk or three members of the authority, he refuses or wilfully neglects to render an account, the justices may by order require him to make the payment or deliver the account (*t*). **[323]**

(*m*) 26 Statutes 181.

(*n*) 4 Statutes 718.

(*o*) Which by s. 7 of the Act includes any council of a county, municipal borough or body administering money raised by rates under a public Act.

(*p*) 4 Statutes 724, 841.

(*q*) L.G.A., 1933, s. 123 (2); 26 Statutes 371.

(*r*) *Ibid.*, s. 122.

(*s*) 26 Statutes 370.

(*t*) L.G.A., 1933, s. 120; 26 Statutes 370.

*Disclosure of Interest in Contracts.*—If it comes to the knowledge of an officer employed by a local authority that a contract in which he has a pecuniary interest—whether direct or indirect—has been, or is proposed to be, entered into by the authority, he must, as soon as practicable, inform the authority in writing accordingly (*u*). An officer who contravenes this requirement is liable on summary conviction to a fine not exceeding £50 for each offence. [324]

**Audit of Accounts.**—The Board of Education do not audit the accounts of a local education authority or an education committee. This work is carried out by district auditors who are appointed by the M. of H. with the consent of the Treasury (*a*). The education accounts of borough councils are subject to district audit under sect. 123 (2) of the Education Act, 1921 (*b*).

Where a local education authority entrust the receipt or payment of money to an education committee or the managers of any public elementary school, the accounts are considered as accounts of the local education authority, and the district auditor has the same powers of disallowance, surcharge, etc., and the managers have the same responsibility as if they were officers of the local education authority (*c*). Sect. 130 of the Act also provides that where a council having powers as to higher education entrust the managers of a school provided by them for the purpose of higher education with the receipt and payment of money, the accounts shall be considered as accounts of the council, and the district auditor has the same powers as respects the managers as if they were officers of the council. (See also titles AUDIT, AUDITORS, SURCHARGE.) [325]

**Acquisition of Land for Schools.**—In order that a local education authority may carry out their statutory obligation of providing schools, it is essential that they should be able to purchase sites. This power is given by sect. 109 of the Education Act, 1921 (*d*), which allows a local education authority to purchase, or take on lease any land or any right over land. For the purpose of the purchase of land by a local education authority by agreement the Lands Clauses Acts (*e*) with the exception of the provisions as to affording access to the special Act, are incorporated with the Education Act, 1921; and in construing these Acts for the purpose of purchase by agreement “the special Act” means the Education Act, 1921, “the promoters of the undertaking” means the local education authority, and “land” includes any right over land (*f*).

Where there are rapidly growing housing estates, it follows that education authorities often require to obtain land for providing elementary and sometimes also secondary education. Builders, as a rule, realise that prospective purchasers or tenants are likely to inquire about facilities for schools for their children, and therefore readily meet the requirements of the local education authority when land is wanted. On the other hand, the unaccommodating builder is not infrequently encountered, and, where he is persistent in his refusal to deal reasonably with the authority, the latter must make use of the

(*u*) L.G.A., 1933, s. 123 (1); 26 Statutes 371.

(*a*) *Ibid.*, s. 220; *ibid.*, 425.

(*c*) Education Act, 1921, s. 130; 7 Statutes 199.

(*d*) 7 Statutes 190.

(*f*) S. 110; 7 Statutes 190.

(*b*) 7 Statutes 196.

(*e*) 2 Statutes 1113 *et seq.*

powers conferred by sect. 111 of the Act of 1921 (*g*) to enable them to purchase the land compulsorily by means of an order of the local education authority confirmed by the Board of Education. [326]

When it is required to make a compulsory order for the purchase of land, the formalities to be observed are detailed in the Fifth Schedule to the Act of 1921 (*h*). The order must be published in the locality in which the land is proposed to be acquired and notice of it must be sent to the owners, lessees and occupiers of the land. If, within the prescribed period, there has been no objection or any objection presented has been withdrawn, the Board of Education will confirm the order unless they are of opinion that the land is unsuitable. In the event of an objection being presented, the Board must order a public inquiry to be held. The Board then consider the report of the person who held the inquiry.

It is essential that the Board of Education (Compulsory Purchase) Regulations, 1933 (*i*), be complied with. A form of compulsory purchase order is scheduled to the Regulations, and the manner of serving notice and of advertising the order in the local newspapers is also prescribed. Objections to the order must be presented to the Board of Education within twenty-eight days after the last date on which the order was advertised.

The provisions of the Education Act, 1921, as to the acquisition, appropriation or disposal of land are not altered by Part VII. of the L.G.A., 1933 (*k*), because of the saving in sect. 179 (*l*) of that Act by which (*m*), in so far as these provisions empower a local authority to effect any transaction, such transaction is not to be effected otherwise than under those provisions and in accordance therewith. It follows that almost the only provision in Part VII. of the Act of 1933, which extends the powers of local education authorities in the acquisition of land, is that in sect. 158 of the Act (*n*) which allows a local authority, with the consent of the appropriate Government department, to acquire by agreement land in advance of their actual requirements. This section may prove of service to local education authorities in rapidly developing housing areas. [327]

**London** (*o*).—The education committee of the L.C.C. is composed of fifty members, five of whom at least must be women. Thirty-eight of these members are members of the L.C.C. and twelve are co-opted by reason of their educational knowledge or experience. The meetings of the committee are held fortnightly, except during vacations. The following sub-committees are appointed : Books and Apparatus ; Elementary Education ; General Purposes ; Higher Education ; Special Services ; Teaching Staff. [328]

(*g*) 7 Statutes 190.

(*h*) *Ibid.*, 228.

(*i*) S.R. & O., 1933, No. 1021.

(*k*) 26 Statutes 391.

(*l*) *Ibid.*, 403.

(*m*) See Seventh Schedule to the Act of 1933 ; 26 Statutes 509.

(*n*) 26 Statutes 392.

(*o*) See "The London Education Service," published by order of the L.C.C., No. 2989, price 1s.

# EDUCATION COMMITTEE, SECRETARY TO

*See DIRECTOR OF EDUCATION.*

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## EDUCATION, DIRECTOR OF

*See DIRECTOR OF EDUCATION.*

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## EDUCATION FINANCE

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See the complete list of the titles bearing on education under the title EDUCATION.

### INTRODUCTION

It is just over a hundred years since the foundation of our present system of educational finance was laid (*a*), although it has been stated (*b*)

(*a*) State support to education was first authorised by a Treasury minute, dated August 30, 1833, making a grant of £20,000 towards the cost of erection of schools and houses.

(*b*) Corlett "Survey of the Financial Aspects of Elementary Education," Chapter III.

that it is possible to trace some form of state intervention in England in very early times. But during the last 100 years the education service has developed a considerable importance in local administration, and the complexity of grant formulae and the many statutory requirements affecting an education authority's income have produced a system of finance which is understood fully only by those constantly in touch with it.

The Education Act, 1921, does not make detailed provision for finance, but in sects. 118 to 132 and in the Sixth Schedule (*c*), provides a statutory basis upon which is built up a vast structure of regulations. These provisions of the Act and the regulations will be dealt with later under appropriate headings. Reference should also be made to such general titles as **BORROWING**; **FINANCE**; **GRANTS**; and **GENERAL EXCHEQUER CONTRIBUTIONS**.

It should, however, be borne in mind that there are for administrative purposes two classes of local education authority, namely that for elementary education and that for higher education (*d*). Local education authorities for elementary education are the councils of counties, county boroughs, non-county boroughs with a population of over 10,000 according to the census of 1901, and urban districts with a population of over 20,000 according to the same census (*e*). Local education authorities for higher education are the councils of counties and county boroughs for their respective areas (*f*). [329]

#### BORROWING POWERS OF A LOCAL EDUCATION AUTHORITY

**Powers.**—Sect. 132 of the Education Act, 1921 (*g*), gives local education authorities power to borrow for the purposes of that Act, and as supplemented by sects. 195—198 of the L.G.A., 1933 (*h*), empowers local education authorities to borrow for a period not exceeding sixty years on the security of all the revenues of the borrowing authority, subject to the sanction of the M. of H. The Minister sanctions borrowing for such purposes as the acquisition of school sites, and the erection and equipment of school buildings, etc. In practice, the local education authority's proposals are first submitted to the Board of Education for approval, except when the expenditure on any project does not exceed £300, when the approval of the Board's inspectors alone is sufficient. The sanction of the M. of H. prescribes the amount which may be borrowed and the period within which the loan must be repaid. Apart from land, for which the period of repayment is usually sixty years, the loan period is generally based on the estimated life of the asset provided by the loan. Under sect. 216 of the Act of 1933 (*i*), a local authority may, without the sanction of the M. of H., borrow for the purpose of replacing existing loans, but the substituted loan must be repaid within the unexpired period of the original sanction.

[330]

(*c*) 7 Statutes 198—200, 224.

(*d*) See title **EDUCATION AUTHORITY**.

(*e*) Education Act, 1921, s. 3 (1); 7 Statutes 131.

(*f*) *Ibid.*, s. 3 (2).

(*g*) 7 Statutes 199; as repealed in part by L.G.A., 1933, except as to London.

(*h*) 26 Statutes 412—414.

(*i*) *Ibid.*, 423.

**Exercise of Powers.**—By s. 196 of the L.G.A., 1933 (*k*), a local education authority may borrow in any of the following ways: (1) by mortgage; (2) by an issue of stock, with the consent of the M. of H.; or (3) by debentures or annuity certificates. See title **BORROWING**.

Sums borrowed by way of mortgage may be repaid in any of the following three ways or partly by one way and partly by another: (i.) equal yearly or half-yearly instalments of principal; (ii.) equal yearly or half-yearly instalments of principal and interest combined; (iii.) by a sinking fund (*l*).

The first instalment of the loan must be repaid or the first payment into the sinking fund must be made within twelve months, or, when repayable by half-yearly instalments, within six months of borrowing (*l*).

Where repayment of a loan is to be made by a sinking fund, the local education authority may elect to maintain the fund either on an accumulating or a non-accumulating basis. In the former case, such a sum is set aside each year, as, with accumulations of interest at the prescribed rate, will be sufficient to pay off the loan for which the fund is established at the end of the sanctioned period. Interest on the investments of the fund must be paid into the county fund or general rate fund, but a contribution must be made annually to the sinking fund equal to the interest which would have accrued to the fund if interest had been credited at the rate per cent. on which the sinking fund contributions were calculated. A non-accumulating sinking fund is a fund into which such equal annual sums are carried as will be sufficient to pay off the loan at the end of the prescribed period. The annual sums so set aside and the accumulations must be invested in statutory securities unless applied in repayment of debt or in some other authorized manner (*m*). [330A]

With the sanction of the M. of H. given in a consent order, or under the provisions of a local Act without such consent order, stock may be issued by a local authority in the exercise of any of their borrowing powers. Such issues are regulated, in the one case by the Local Authorities (Stock) Regulations, 1934 (*n*), and in the other by the Local Act. The stocks of county councils and of boroughs having a population at the last census of over 50,000 are available to trustees (*o*).

A local authority may also under sect. 215 (1) of the Act of 1933 (*p*) borrow, by way of temporary loan or overdraft from a bank or otherwise, sums required for defraying capital expenditure pending the raising of a loan which they have been authorised to raise. When this loan is raised, the date of its borrowing is deemed to be the date of the temporary borrowing. Under the Public Works Loans Act, 1875 (*q*), education is one of the services in respect of which the Public Works Loan Commissioners may make advances to Local Authorities.

Many authorities meet small items of capital expenditure out of current revenue instead of having recourse to borrowing, thereby effecting considerable economies in interest charges and the cost of administration. [331]

(*k*) 26 Statutes 413.

(*l*) L.G.A., 1933, s. 212; 26 Statutes 420.

(*m*) *Ibid.*, s. 213 (2); 26 Statutes 420. The rate of accumulation is fixed by the Local Government (Sinking Funds, Rate of Accumulation) Regulations, 1934, at 3 per cent.; see S.R. & O., 1934, No. 1320.

(*n*) For subsequent procedure, see Local Authorities (Stock) Regulations; S.R. & O., 1934, No. 619.

(*o*) Trustee Act, 1925, s. 1 (1) (*m*); 20 Statutes 97.

(*p*) 26 Statutes 422.

(*q*) 12 Statutes 255 *et seq.*

### GRANTS FROM PUBLIC FUNDS

**Introduction.**—The Board of Education pay grants to local education authorities in accordance with regulations made under sect. 118 of the Education Act, 1921 (*r*). These regulations prescribe the conditions which the authority must observe, and in addition determine how the amount of grant is to be ascertained. Sums paid or expenditure attributable to a service administered by a Government department, other than the Board of Education, are excluded in ascertaining the grant payable by the Board. **[332]**

**Elementary Education.**—The Elementary Education Grant Regulations, 1932, and Amending Regulations, No. 1, 1933, No. 2, 1934 and No. 3, 1934, No. 4, 1935 and No. 5, 1935 (*a*), provide that grant shall be calculated on a formula based on average attendance, net expenditure and the product of a rate. From July 1, 1935, the formula is as follows:

First is ascertained the aggregate of (1), 36s. for each unit of average attendance in public elementary schools maintained by the local education authority; (2) Twelve-twentieths of salaries and superannuation of teachers in those schools; (3) one-half of the net expenditure on special services, maintenance allowances, and outlay on educational reorganisation or development; and (4) one-fifth of the remaining net expenditure.

Then from this aggregate is deducted the product of a 7d. rate in the area of the local education authority.

The grant for the financial year 1935-36 will be based on a transitional formula which is necessary because the Amending Regulations apply only from July 1, 1935. The variations made in the transitional formula are:—

37s. 3d. per unit of average attendance in lieu of 36s.;  
eleven-twentieths of net expenditure on Salaries and Superannuation of Teachers for the period April 1 to June 30; and  
twelve-twentieths of this item for the period July 1 to end of financial year.

The full operation of the Amending Regulations No. 5 of 1935 will restore the position obtaining for some years prior to 1932.

The 1932 regulations were issued following the 10 per cent. cut in teachers' salaries in consequence of the financial crisis of 1931 and had the effect of securing in the aggregate the full benefit of the reduced expenditure for the national accounts. This was done by reducing the salaries factor in the grant formula from 60 per cent. to 50 per cent. and increasing the capitation grant from 36s. to 46s.

The restoration of 5 per cent. of the cut in 1934 and the further restoration of the balance of the cut in 1935 made amending regulations necessary in order to prevent the added expenditure being borne wholly on local rates. As the restored instalments of the cut dated from July 1 in each case the amending regulations had to provide a transitional formula for the particular financial year in which the restoration took place as mentioned above in connection with the year 1935-36.

The grant of one-half of outlay on education reorganisation or development was awarded in 1929 in order that authorities should be encouraged to take steps to provide the additional accommodation

(*r*) 7 Statutes 193.

(*a*) S.R. & O., 1932, No. 66; 1933, No. 315; 1934, No. 351; 1934, No. 667; 1935, 355; 1935, Draft dated May 18th.

necessary in the event of the school-leaving age being raised to 15 years. It applies only to contractual commitments entered into after August 31, 1929, and before September 5, 1931. [383]

The Board of Education will pay grant equal to twelve-twentieths of the salaries and superannuation of teachers, but if any scales of salary in schools provided or maintained by the authority are less than the scales of salary prescribed by the Burnham award of March 27, 1925, and if in the opinion of the Board the efficiency of the provision made for elementary education for the area is thereby endangered, the Board may make such deduction from the grant as will secure that the expenditure of the authority falling to be met from rates shall not be less than such expenditure would have been if the scales of salary in question had been in accordance with the scales prescribed by the award. See also *post*, p. 178.

Special services comprise school medical service, provision of meals, special schools for blind, deaf, defective or epileptic children, organisation of physical training in public elementary schools, play centres, and nursery schools (b).

Payments by way of maintenance allowances for pupils who being at least 14 years of age at the beginning of the term in which they receive an allowance, are prepared to continue their education for a definite period, will rank for the Board's grant at the rate of one-half. Allowances may be paid only where a need of assistance exists.

The product of a rate in an authority's area will be ascertained from the product of a penny rate in each rating area as determined under the Rating and Valuation Act (Product of Rates and Precepts) Rules, 1929 (c).

Additional grant may be paid in highly-rated areas by way of an additional fixed grant or an additional formula grant, or both—see Art. 4 of the Elementary Education Grant Regulations, 1932, and subsequent amendments (d). [384]

The following expenditure is excluded in calculating grants : (1) Payments to another local education authority in respect of children for whom the paying authority are responsible (*e.g.* institution children, extra district children and children in special schools). (2) Expenditure under the Local Government and other Officers' Superannuation Act, 1922, or a local pension Act. (3) Education rates on schools, etc.

The formulæ used by the Board for the disallowance in the elementary education account of expenditure on education rates are as follows :

#### COUNTIES

<u>Rateable value of elementary schools, etc., in county area for elementary education</u> <u>Total rateable value of county area for elemen-</u> <u>tary education</u>	<u>plus</u> <u>Net income from rates in county area for elementary education.</u>
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<u>Rateable value of elementary schools, etc., in county area for elementary education</u> <u>Total rateable value of county area for higher education</u>	<u>Net income from rates in county area for higher education.</u>
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#### COUNTY BOROUGHS

<u>Rateable value of elementary schools, etc.</u> <u>Total rateable value of county borough</u>	<u>Net income from rates (elemen-</u> <u>tary and higher).</u>
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(b) See title EDUCATION SPECIAL SERVICES.

(c) S.R. & O., 1929, No. 12 ; 14 Statutes 821.

(d) See S.R. & O., mentioned in note (a) on p. 170, *ante*.

## BOROUGHS AND URBAN DISTRICTS

Rateable value of elementary schools, etc.      Net income from rates (elementary).  
Total rateable value of borough or urban district ×

Monthly instalments based on 90 per cent. of the estimated amount of grant payable for the year are paid by the Board during the year, the final adjustment being made after the audited accounts for the year have been examined by the Board. [335]

**Grants Payable to Managers of Schools and Institutions not Provided by Local Education Authority (e).**—Managers of special schools will receive a grant from the Board of Education which from July 1, 1935, will be at the rate of £8 10s. 0d. and £16 10s. 0d. per unit of average attendance in day and boarding schools, respectively, as regards blind or deaf children, and at the rate of £7 10s. 0d. and £15 10s. 0d. in day and boarding schools, respectively, as regards defective or epileptic children. As mentioned in a note (par. 333) under the heading "Elementary Education," the Amending Regulations of 1934 and 1935 have also been made to adjust the position arising out of the restoration of the cut in salaries in two instalments in those years. As the restoration dates from July 1 in each year and the grant is made for the financial year, the regulations have provided for a transitional payment in respect of 1934-35 and 1935-36. The grant in respect of defective or epileptic children at open-air schools may, subject to satisfactory arrangements for medical treatment, be increased by sums not exceeding £4 and £9 per unit of average attendance in day and boarding schools respectively. In calculating these grants, the Board will not recognise attendances made by pupils on account of whom payments for maintenance are made by local authorities as the expenditure of those authorities ranks for Board's grant.

Grant at a rate not exceeding one-half of the recognised expenditure is payable by the Board in respect of nursery schools and play centres. Application for payment of grant must be submitted to the Board through the local education authority. [336]

**Higher Education.**—The grant payable by the Board to the local education authority in aid of higher education is equal to one-half of the net expenditure recognised by the Board; see the Higher Education Grant Regulations, 1933, and amending regulations (No. 1) of 1934 and (No. 2) of 1935 (f).

The Amending Regulations of 1934 and 1935 made the necessary adjustments in respect of the restoration of cuts made in salaries in 1931. See note in par. 333 under heading "Elementary Education."

In ascertaining net expenditure qualifying for grant, the Board exclude from the expenditure shewn in the Education Account:

- (1) Expenditure which is attributable to a service in respect of which payments are made by a Government department other than the Board of Education, e.g. Contributions to Universities, Agricultural Education and Juvenile Employment.
- (2) Contributions to non-provided schools which are in receipt of direct grant from the Board, "Direct Grant Schools."
- (3) In Wales and Monmouth, contributions paid by the local education authority to the Central Welsh Board for Intermediate Education.

(e) S.R. & O., 1925, No. 835; 1931, No. 184; 1932, No. 19; 1934, No. 672; 1935, Draft dated May 14th.

(f) S.R. & O., 1933, No. 316; 1934, No. 668; 1935, Draft dated May 13th.

- (4) Expenditure not recognised by the Board, e.g. education rates, expenditure under the Local Government and other Officers' Superannuation Act, 1922, or a local pension Act. [337]

Local education authorities providing training colleges receive an additional grant on a capitation basis, subject to such rateable reductions as may be necessary to limit the total of such additional grants payable by the Board to £70,000, as follows :

- (1) On account of students who are recognised under the Regulations for the Training of Teachers, 1934 (g), from outside the area of the authority, at the rate of £30 for resident and £12 for day students, subject to a limit of one-half of the amount estimated by the Board as the authority's net expenditure in respect of these students; and
- (2) On account of students similarly recognised from within the area of the local education authority, at the rate of £10 for resident and £4 for day students.

For the purpose of the grant the number of students will be taken as  $\frac{1}{3}$  of the sum of the numbers on the 15th May, 15th November and 15th February in the year for which the grant is payable.

These additional grants are conditional upon the Board being satisfied that :

- (1) The training colleges have complied with the Board's Regulations for the Training of Teachers; and
- (2) The annual fees charged for recognised students from outside the area of the local education authority have not exceeded £40 for a resident and £20 for a day student, except with the special consent of the Board.

The Board will deduct from the grant payable to the local education authority for higher education by whom training colleges are not provided, an amount equal to a fraction of the total amount of the additional grants above-mentioned, such fraction being ascertained by taking one-half of the sum of the following fractions for the preceding year :

- (1) The average attendance in public elementary schools maintained by the local education authority and by other local education authorities within their areas, divided by the sum of the like average attendances for the areas of all contributing authorities.
- (2) The number of pounds produced by a penny rate in the area of the local education authority, divided by the sum of the like numbers for the areas of all non-providing authorities.

Training colleges in which domestic subjects only are taught are excluded from the above grant. [337A]

The sums to be disallowed by the Board in respect of amounts paid from higher education account for education rates are arrived at by the following formulæ :

COUNTIES

$$\frac{\text{Rateable value of higher schools, etc., in county area for elementary education}}{\text{Total rateable value of county area for elementary education}} \times \text{Net income from rates in county area for elementary education.}$$

plus

$$\frac{\text{Rateable value of higher schools, etc., in county area for higher education}}{\text{Total rateable value of county area for higher education}} \times \text{Net income from rates in county area for higher education.}$$

## COUNTY BOROUGHS

Rateable value of higher schools, etc.	$\times$	Net income from rates (higher and elementary)
Rateable value of county borough		

The payment of grant in respect of expenditure on aid to students is subject to the following conditions :

- (1) The arrangements of the local education authority with regard to such aid and the estimates of the cost must be approved by the Board of Education.
- (2) The aid must be for the purpose of enabling students to follow courses of education which are suitable to them.
- (3) The students must be in need of assistance.
- (4) The arrangements must specify the extent to which they are applicable to students who are in receipt of maintenance allowances or other aid given in fulfilment of awards made by the local education authority before April 1, 1933.

The Board of Education pay grant to the authorities by monthly instalments on account during the year, of a sum estimated to amount to 90 per cent. of the grant payable for the year, the final adjustment being made after the audited accounts for the year have been examined by the Board.

Any grant under the Regulations for Secondary Schools, 1933 (*h*), which is receivable by the local education authority in pursuance of a scheme under the Welsh Intermediate Education Act, 1889 (*i*), will be treated as grant under the Higher Education Grant Regulations, 1933 (*k*). **[338]**

**Grants to Bodies other than Local Education Authorities. Training Colleges.**—Grants are payable by the Board of Education to training colleges not provided by a local education authority or authority for higher education under the Regulations for Training of Teachers, 1934 and Amending Regulations No. 1, 1935 (*l*), as follows, for an academic year :

- (1) Tuition Grant.—£28 for a male student; £26 for a female student.  
Maintenance Grant.—£43 for a resident male student; £34 for a resident female student; £26 for a day male student; £20 for a day female student.  
Maintenance grants for day students are payable to the students through the college authorities.
- (2) In respect of undergraduate university students for whom a four-year course including work for a university degree is approved :  
Special supervision grant of £5 per student.  
Grant in or towards payment of the student's fees for a degree course.  
Maintenance grant as in (1) above.
- (3) Tuition grant at a rate not exceeding £35 for a fourth-year or post-graduate student.

(*h*) S.R. & O., 1932, No. 937; 1934, No. 670.

(*i*) 7 Statutes 265.

(*k*) S.R. & O., 1933, No. 316; 1934, No. 668; 1935, Draft dated May 13th.

(*l*) *Ibid.*, 1934, No. 680; 1935, Draft dated May 13th.

- (4) Relief grant (for the academic year 1933-34 only)—£1 10s. per student.
- (5) Contributory grant—£1 10s. per student.
- (6) Examination grant to a recognised joint examination board—£1 10s. per student examined.

The increase of £1 10s. in the tuition grants by the Amending Regulations of 1935 relate to the academic year commencing August 1 and the grant payable in respect of a period ended before July 1, 1935, is to be increased by 2s. 6d. instead of £1 10s. [339]

*Training of Graduates at Secondary Schools.*—The Board will pay grants to the governing body of a non-provided secondary school in receipt of direct grant from the Board, at the yearly rate of £40 for the first, £30 for the second, and £20 for the third student who has obtained a university degree and is being trained for a systematic study of the principles and practice of teaching at such school. [340]

*Other Courses for Teachers.*—Teachers attending approved full-time courses of advanced study or research at Universities or other institutions may receive for not more than two years a grant at a rate not exceeding £100 for an academic year.

The Board will make grants towards the travelling expenses of teachers selected to attend short courses of instruction for teachers arranged by the Board. [341]

*Secondary Schools.*—In respect of recognised secondary schools not provided by the authority and whose governing bodies receive grant direct from the Board, the grants for a school year beginning on August 1 are as follows, under the Regulations for Secondary Schools, 1933, and the Amending Regulations No. 1, 1934, and No. 2, 1935 (m) :

- (1) £8 18s. for each pupil between 11 and 19 years of age. If the grant would otherwise be less than £350 for a school year, the Board may make up the grant to that sum.
- (2) £2 per pupil entered for an approved first or second examination without charge, or at a charge at least £2 less than the full examination fee. There is a variation of this grant in the case of schools governed by scheme under the Welsh Intermediate Education Act, 1889 (n).
- (3) £400 for any recognised advanced course, but if there are more than three such courses in one school, the total grant will not exceed £1,200.
- (4) Grant towards expenses of special or experimental work approved by the Board and involving special expense.
- (5) £20 towards expenses of a teacher on the staff of a school who visits another secondary school for the purpose of studying method and gaining enlarged experience.

The Amending Regulations of 1935 deal with the adjustment necessary in consequence of the restoration of cuts in salaries, and the increased grant may be withheld wholly or in part by the Board of Education where the arrangements in that connection in any particular case are abnormal or unsatisfactory. [342]

(m) S.R. & O., 1932, No. 937; 1934, No. 670; 1935, Draft dated May 13th.

(n) 7 Statutes 265.

*Further Education*.—Direct grant schools will receive grant from the Board from time to time after consideration of the character, efficiency, volume and cost of the work of the school, and of the aggregate sums available to the Board for grants of this nature; see the Regulations for Further Education, 1934 (o). [348]

*Courses of Higher Education for Blind, Deaf, Defective and Epileptic Students*.—The grants payable for each year commencing April 1, to institutions not provided by the authority are as follows, under the Board of Education (Special Services) Regulations, 1925 (p) :

- (1) £8 10s. 0d. per annum for each unit of average attendance for a day pupil and £16 10s. 0d. for a boarder.
- (2) A sum equal to two-and-a-half per cent. of salaries of teachers in contributory service as calculated for the purposes of the Teachers (Superannuation) Act, 1925. [344]

*Adult Education*.—Responsible bodies (not being local education authorities) may receive grants from the Board in aid of the liberal education of adults, i.e. persons of at least 18 years of age, under the Adult Education Regulations, 1932, and the Amending Regulations No. 1, 1934, and No. 2, 1935 (q). The school year for the purposes of these regulations is from August 1 to July 31, and the courses eligible for grant are :

- (1) Extra-mural and similar courses under Universities or University Colleges : (a) Classes preparatory to three-year tutorial classes. (b) Three-year tutorial classes. (c) Advanced tutorial classes. (d) Tutorial class vacation courses. (e) University extension courses.
- (2) Part-time courses under approved associations, etc. (a) Terminal or short terminal courses. (b) One-year courses. (c) Vacation courses.
- (3) Courses in a residential college, not being a university college or a constituent college of a university. [345]

The full grant is three-quarters of the fees, exclusive of travelling or similar expenses, paid to a teacher, or a maximum prescribed in the regulations for each type of course, whichever is the less. This rate of grant does not apply to vacation courses and courses in residential colleges. In substitution for these separate grants the Board may, in certain circumstances, aid the work of a limited number of tutors under a University or University College as responsible body by inclusive grants. [346]

*Agricultural Education*.—Grant is payable to a local education authority in accordance with the Regulations for Grants in aid of Agricultural Education in England and Wales, 1928, as amended by letter of the M. of A. & F. (Ref. T.E. 11,797) dated September 29, 1931. The maximum grant payable is 60 per cent. of the approved net expenditure on agricultural education chargeable to the higher education account. The authority's contribution in respect of the superannuation of officers ranks for grant. [347]

(o) S.R. & O., 1934, No. 303.

(p) *Ibid.*, 1925, No. 835; 1931, No. 184; 1934, No. 672; 1935, Draft dated May 14th.

(q) *Ibid.*, 1932, No. 75; 1934, No. 671; 1935, Draft dated May 14th.

**Choice of Employment and Unemployment Insurance Administration.**—Grants are payable by the Ministry of Labour towards the administrative expenses incurred by a local education authority under sect. 107 of the Education Act, 1921 (*r*), and sect. 6 of the Unemployment Insurance Act, 1928 (*s*), as amended and extended by the Unemployment Act, 1934 (*t*), and consolidated in the Unemployment Insurance Act, 1935.

The regulations of the Minister of Labour in this connection are the Local Education Authorities (Choice of Employment Grant) Regulations, 1928 (*u*), as amended in December 1934 (*u*), and the Unemployment Insurance (Education Authorities Administrative Expenses) Regulations, 1934 (*u*). Instead of separate grants for the two services, a single combined grant representing three-quarters of the approved expenditure incurred by a local education authority on choice of employment and on administration of unemployment insurance is payable as from September 1st, 1934. [348]

**Children and Young Persons Act, 1933.**—The grant payable by the Home Office towards the expenses of a local education authority in respect of children and young persons committed to their care as fit persons and boarded out by the authority under sect. 84 of this Act (*v*), is a sum equal to one-half of the approved net expenditure, provided that the gross total payments made by the authority do not, save in exceptional circumstances and with the special approval of the Secretary of State, exceed 15*s.* per week in any one case. In addition the Home Office pay a grant to a local education authority responsible for the maintenance of children and young persons boarded out, equal to one-half of the parental contributions collected in respect of such cases. In the case of an approved school whether provided and maintained by a local education authority for elementary education either acting alone or in combination with other like authorities or by a body of managers, the Home Office, under sect. 104 of the Act (*w*), meet the approved deficiency on the school account for each year. See also *post*, p. 187.

[349]

#### EXPENSES OF A LOCAL EDUCATION AUTHORITY

The expenditure of a county council on education is by virtue of sect. 122 of the Education Act, 1921 (*a*), payable out of the county fund, and as a county council have no power of levying a rate directly the amount required is obtained by means of precepts addressed to the various rating authorities within the county. These precepts require the payment by each rating authority of the proceeds of a rate in the pound of specified amount for elementary and higher education respectively. Sect. 122 of the Act of 1921 (*b*) also allows a county council to charge certain expenses on parishes which in the opinion of the county council are specially benefited by that expenditure, provided that no such charge for elementary education purposes is made on a district for which the county council are not the authority for elementary education. In most of the counties these special charges have ceased to be exacted.

(*r*) 7 Statutes 189.

(*s*) 20 Statutes 703.

(*t*) 27 Statutes 816.

(*u*) S.R. & O., 1928, No. 327; 1934, No. 1442.

(*v*) 26 Statutes 221.

(*w*) *Ibid.*, 237.

(*a*) 7 Statutes 195.

(*b*) See also L.G.A., 1929, Sched. X., para. 15; 10 Statutes 997.

In boroughs and urban districts the expenditure of the council on education is payable under sects. 185, 188 of the L.G.A., 1933 (c), out of the general rate levied by the council under the R. & V.A., 1925. [350]

### SALARIES AND SUPERANNUATION OF TEACHERS (cc)

**Teachers' Salaries.**—The rates of salary paid to nearly all full-time teachers employed in public elementary, secondary and technical (d) schools and training colleges maintained by local education authorities, or in schools and colleges for which such authorities accept responsibility for the salary scales, are governed by the Burnham Scales (e). The officers not covered by the scales are mainly supplementary teachers in public elementary schools, heads of secondary schools, principals and heads of departments of technical schools and instructors in technical schools ; and local education authorities have been recommended to formulate their own scales for the secondary and technical school teachers concerned, subject to the approval of the Board of Education. No recommendation has been made in the case of supplementary teachers, but local education authorities employing these teachers remunerate them on scales somewhat lower than those in force under the Burnham Scale for uncertificated teachers in the area concerned.

The Burnham Scales lay down various rates of standard salary which were fixed having regard to all the conditions prevailing in the local education authority's area according to the general cost of living in the area, the type of school, and the status, qualifications and length of service of the teacher. The standard salary may only be increased within the limits of a prescribed sum known as the margin. Payments out of the margin are at the discretion of the authority and may only be made within the limits of certain allowances specified in the scales. The Board of Education recognise for grant purposes expenditure incurred by local education authorities in paying salaries on the various scales and adjust their grant, if necessary, so that no authority shall gain financially by paying salaries on a basis lower than the appropriate standard scales. See also *ante*, p. 171. Any expenditure incurred by an authority, in paying salaries in excess of the standard scales and the margin, is disallowed by the Board

(c) 26 Statutes 407, 408. Ss. 123 (1) and 124 of the Education Act, 1921 (7 Statutes 196), are repealed by the L.G.A., 1933.

(cc) See also title TEACHERS.

(d) Technical schools include colleges for further education, schools of art, junior technical schools, junior housewifery schools, technical day classes, evening schools and day continuation schools.

(e) For details of the current scales and codified decisions of the Burnham Reference Committees and the Board of Education, see :

(i.) Third Report of Standing Joint Committee on Salaries of Teachers in Public Elementary Schools, February, 1927.

(ii.) Second Report of Standing Joint Committee on Salaries of Teachers in Secondary Schools, February, 1927.

(iii.) Second Report of Standing Joint Committee on Salaries of Teachers in Technical Schools, February, 1927.

(iv.) Report of Standing Joint Committee on Salaries of Teachers in Secondary Schools, October 1, 1920.

N.B.—The Board of Education in Administrative Memorandum No. 128 (February 22, 1935), informed local education authorities that the provisions of Lord Burnham's Award of 1925 would continue until March 31, 1936.

Salaries at the rate of 95 per cent. of scale (iv.) are in force for teachers in training colleges.

for grant purposes and has to be met entirely from the local rate.  
[351]

**Teachers' Service Books.**—It is of paramount importance in order to pay salaries correctly under the scales that a local education authority should have readily available a complete and exact record of each full-time teacher's qualifications and service. To meet this need and to provide a record of pensionable service, the Board of Education issue a form of Teachers' Service Book (Form 1 C.R.) for every teacher employed in contributory service within the meaning of the Teachers (Superannuation) Acts, 1918 to 1933 (f). In the Service Book are entered by the Board of Education the teacher's name, date of birth, reference number, training under the Regulations for the Training of Teachers, dates of code recognition, yearly totals of superannuation contributions and growing total of pensionable service. Details of university degrees (or other qualifications accepted as being equivalent to degrees for salary purposes), special training, industrial experience, chronological records of service, salary and emoluments, service not allowable for pension purposes, and growing total of service for salary purposes are entered and certified by the authority or other employing body. The Service Book is the property of the Board of Education, and although normally kept in the custody of the authority is recalled annually by the Board for inspection. Upon a teacher leaving the employ of one authority to enter the service of another authority, the Service Book is returned by the authority holding it to the Board, for issue to the new employer. Service Books relating to teachers who permanently leave contributory service are retained by the Board.

The Service Book is regarded by the Board as a document which should be inspected only by the Board, the teacher or his employer, and is designed to last for the duration of a teacher's professional life. A teacher is entitled to inspect his Service Book without fee at the offices of his employer, or he may request to be supplied with a copy of his Service Book, for which a small fee is usually charged. [352]

**Incremental Dates.**—The Burnham Scales allow local education authorities to follow their own procedure as regards the date of annual increments, and this date may be either uniform for all teachers, or may depend on the date at which a given teacher completes a further full year's service. It is generally agreed by local education authorities and the Board that there is an advantage in selecting April 1 as a uniform incremental date for all teachers. This date is a convenient one for the authority and coincides with the yearly records kept in the Teachers' Service Books. [353]

**Occasional and Part-time Teachers.**—The salaries of part-time teachers regularly employed are frequently calculated at such proportion of their appropriate full-time salary, as their hours of employment bear to the hours a full-time teacher is normally employed, although other methods of calculation are sometimes employed.

Supply or occasional teachers are usually engaged on a day-to-day basis to fill vacancies caused by the temporary absence of permanent teachers, and are commonly remunerated at daily rates of pay, which approximate to their appropriate full-time salary divided by the number of school days in the year.

Part-time teachers employed in evening and similar technical schools are remunerated by fees, fixed by the authority with the approval of the Board of Education, according to the number of hours occupied and the nature of the instruction given. [354]

**Teachers' Superannuation Contributions.**—The superannuation of teachers is governed by the Teachers (Superannuation) Acts, 1918 to 1933 (g). The main Act is the Teachers (Superannuation) Act, 1925 (h), and this applies compulsorily to all teachers, except supplementary teachers, who are in contributory service, i.e. full-time service within the meaning of the Act in grant-aided schools or in other schools recognised for superannuation purposes by the Board. In addition to teachers, sect. 14 of the Act (i) extends its provisions to administrative officers of local education authorities, termed organisers, who satisfy the conditions of that section.

Under powers conferred by sect. 17 of the Act of 1925 (k), the Board of Education have made detailed rules (l) for carrying the Act into effect. These rules principally affect employers by the limitations which they impose on contributory service, during teachers' absences from duty on account of illness and other causes, resulting in a clear distinction between service for salary purposes under the Burnham Scales and service for purposes of the Teachers (Superannuation) Acts. [355]

The superannuation scheme for teachers is financed by contributions from teachers amounting to 5 per cent. of their gross salary, and contributions of like amount from their employers, the latter being subject to an Exchequer grant equal to that payable in respect of expenditure on the salaries of teachers. Although the Act of 1925 provides, as one of its benefits, for the payment to teachers of a lump sum on their retirement, all contributions paid by teachers are deductible from the total emoluments for the purposes of the Income Tax Acts (m) because the contributions are paid into the Exchequer and are not funded. Contributions are collected by employers from teachers by means of deductions from the gross salary at the time the salary is paid, and are in turn collected by the Board of Education, together with the employers' contributions, by means of deductions from grants. [356]

The Board require from employers detailed annual returns of all contributions collected from teachers in order that they may make the necessary entries in the teachers' Service Books of the contributions paid by each teacher. The returns provide for a summary to enable the Board to satisfy themselves that contributions at the rate of 5 per cent. have in fact been deducted from the salary of every teacher, and also provide for statements of the total gross salary expenditure including the value of emoluments in kind, less non-contributory salary expenditure (details of which are required in a separate return) and a calculation of 5 per cent. of the resulting total, which must equal the total contributions actually collected from teachers. [357]

(g) 7 Statutes 303 *et seq.*; 26 Statutes 129.

(h) 7 Statutes 317.

(i) *Ibid.*, 331.

(k) *Ibid.*, 333.

(l) The Teachers' Superannuation Rules, 1926 (S.R. & O., 1926, No. 415); The Teachers' Superannuation (Employers Contributions) Rules, 1928 (S.R. & O., 1928, No. 200); The Teachers' Superannuation Amending Rules, 1930 (S.R. & O., 1930, No. 219).

(m) See s. 31 of Finance Act, 1922; 9 Statutes 641.

It should be noted that local education authorities and other bodies employing teachers take no part in the administration of the Teachers (Superannuation) Acts, apart from their duty of collecting and paying contributions and accounting for them to the Board of Education. Benefits of all kinds under the Acts and refunds of contributions to teachers who are not eligible to receive pensions or gratuities are paid by the Board direct to the individual teacher concerned. [358]

**Methods of Paying Salaries to Teachers.**—It is the practice in some areas for head teachers to claim their salaries and those of their assistants monthly on forms analysed to show gross salary (contributory service), gross salary (non-contributory service), superannuation deductions, income tax deductions (where the local education authority has agreed a scheme with the Inland Revenue) and net amount due. After certification by responsible officers of the authority, the forms are usually passed to the financial officer for checking, but salaries are not actually paid unless and until the head teacher certifies, at the end of the month to which the form relates, that the teachers named on it have completed the month's service, and enters details of any cases of absence from duty as shown in the official school records. [359]

Various methods are employed for the payment of teachers' salaries, including :

- (1) Payment in cash by visiting pay clerks, a system now apparently out of favour on account of its expense and risk.
- (2) Payment in cash at the offices of the local education authority, a system only applicable to compact areas, such as a borough or urban district.
- (3) Payment in cash on presentation of an official form of receipt to the local education authority's bankers, representing a wider application of system 2.
- (4) Payment by inclusive cheque to the head-teacher, who distributes the cash to his staff. This is an easy system to administer, but it involves a waste of the head-teacher's time in cashing cheques, and some risk in the conveyance of comparatively large sums from the bank.
- (5) Payment by individual cheque. This is probably the most common method of payment, but involves a great deal of clerical work at the offices of a large authority.
- (6) Payment through the Post Office Savings Bank. This is a suitable system in large towns and involves no expense to teachers. The Post Office make special arrangements for the convenience of authorities and teachers.
- (7) Payment by crediting an individual teacher's banking account. A system capable of universal application in any area in which a branch of a banking company is situate. The banks usually agree to allow teachers to open banking accounts without charge, provided that a credit balance is maintained. This system reduces to a minimum the clerical work in the office of the authority, and eliminates the risk and inconvenience to teachers and their employers of handling cash. The district auditor accepts, as equivalent to a receipt signed by the teacher, the certificate of a bank manager that salary has been credited to a teacher's account. [360]

### INCOME TAX AS AFFECTING A LOCAL EDUCATION AUTHORITY

Income tax may be an important item in educational finance but a Local Education Authority is not a separate tax entity, and the liability merges into that of the local authority.

It is not, therefore, practicable to isolate the liability of an authority in respect of its education administration and reference should be made to the separate title, INCOME TAX, where the question of liability to tax is fully treated as a whole.

There are, however, special reliefs and exemptions which have a particular reference to education, and some notes regarding these may be included here.

An important question, which is not entirely free from doubt, is as to whether a Local Education Authority can be regarded as a charity within the meaning of the Income Tax Acts for the purpose of exemption from tax. [361]

In practice, and to a limited extent an Education Authority may be so regarded, the taxable income in respect of which the claim for exemption is made must be shewn to be compulsorily applicable to the charitable purpose and not in effect a part of its general rate fund. This question may arise in respect of tax chargeable under either Schedules A, B, C and D.

The following notes refer to exemption or partial exemption under Schedule A (a), in respect of educational premises.

(i.) Public buildings and offices belonging to any college or hall in any university so far as not occupied by any individual member thereof or by any person paying rent (b).

(ii.) Public buildings, offices and premises belonging to any "public" school so far as not occupied by any individual officer or master whose total annual income, however arising, amounts to £150 or more, or by any person paying rent for the same. [362]

A "public" school is one which is maintained for a public object and need not be a school in which no fees are charged. Exemption was allowed to a school where substantial fees were paid. The balance of expenditure was met by the City of London Corporation and no profit was sought (c). Exemption was refused to the Free Church College of the Free Church of Scotland, as the main object of the institution was not deemed to be a public one (d). In *Cardinal Vaughan Memorial School, Trustees v. Ryall* (e), it was held that the school was a public school within the meaning of No. VI., Schedule A, although the Commissioners contended that because it was denominational it was not a public school.

In *Girls' Public Day School Trust, Ltd. v. Ereaut* (f), it was held that a day school owned by a company whose preference shareholders had a substantial pecuniary interest in the school was entitled to exemption

(a) 9 Statutes 532.

(b) In *College of Preceptors v. Jenkins* (1919), 89 L. J. (K. B.) 27 (28 Digest 11, 55), it was held that the "college" must be in a university and that neither a college nor a hall is within the meaning of No. VI. of Schedule A unless it is in a university.

(c) *Blake v. London Corpn.* (1887), 19 Q. B. D. 79; 28 Digest 11, k.

(d) *Bain v. Free Church of Scotland* (1897), 61 J. P. 742; 28 Digest 13, n.

(e) (1920), 36 T. L. R. 694; 28 Digest 13, 62.

(f) [1931] A. C. 12; Digest (Supp.).

under Schedule A. It should be noted that the school in question was open to the general public and a large proportion of pupils were from public elementary schools. Also a great proportion of the governing body was nominated by the local education authority, and the school was largely maintained by public moneys and satisfied the regulation which prohibits any parliamentary grant to a school conducted for private profit. [363]

The following case (g) is also of importance. The trustees of a religious body owned schools which were previously exempt. Under the Education Act, 1918, the schools were leased by them to the local education authority as tenants. The trustees claimed a continuation of the exemption on the ground that the premises were public schools and that the local education authority was not a "person" in occupation of the premises and "paying rent for the same." It was decided that the authority was a person paying rent for the premises and the exemption could not be allowed. [364]

#### INCOME OF A LOCAL EDUCATION AUTHORITY

The chief items of education income, apart from Government Grant, are fees of pupils for higher education (h), sales of books and articles made in school, receipts from the letting of school premises, contributions from parents in respect of special services, contributions from other authorities for extra-district and institution children (the latter in respect of elementary education only) and contributions from managers of non-provided elementary schools towards the cost of repairs to buildings, when these are carried out by the local education authority under sect. 29 (2) (d) of the Education Act, 1921 (i), and the managers contribute towards the cost. [365]

Tuition fees of pupils in schools for higher education are fixed at rates decided by each local education authority, subject to the approval of the Board of Education and, where applicable, to that of the governors of the school or local higher education committee. In some instances the cost of books required by pupils is not included in the tuition fees.

Fees are invariably payable in advance, and it is usually the practice to verify that they have been paid before a pupil is admitted at the beginning of a term. A convenient method of collecting fees of pupils in secondary schools is to require payment to be made to a bank, who will credit the amounts direct to the banking account of the receiving authority. Under this system, a fee bill, i.e. a formal notice of fees due, is sent to each parent, requesting him to present the bill to a bank and pay the fees there. The fee bill may comprise four parts: (1) the formal notice and instruction for payment, (2) a portion to be retained by the bank as a paying-in slip, (3) a statement certified by the bank that fees have been paid (later presented to the school as evidence of payment) and (4) the official receipt for the parent. The advantages of this system are that fees are paid direct to the authority's account,

(g) *Bryan v. Trustees of Roman Catholic Archdiocese of Glasgow*, [1922] S. C. 252; 28 Digest 12, l.

(h) No fees may be charged or other charges made in a public elementary school, see s. 37 (1) of the Education Act, 1921; 7 Statutes 150.

(i) 7 Statutes 144.

thus obviating trouble and the expense of postage, and that an official notification to the head of the school that fees have been paid is secured.

**[366]**

Local education authorities are required to provide as a special service a system of medical inspection and treatment for children in their schools. This service usually covers ophthalmic and dental treatment, and, in conjunction with hospitals, minor operations for the removal of tonsils and adenoids. Children suffering from major physical defects of such a nature as to render them unsuitable for attendance at ordinary schools are sent to special schools for physical defectives, which may be provided and maintained by local education authorities (*k*).

Local education authorities are required by sect. 81 of the Education Act, 1921 (*l*), to recover the cost of medical treatment from a child's parent, unless they are satisfied that the parent is unable to pay the amount.

**[367]**

A further special service is the provision of meals for school children, and here again sect. 83 of the Act (*m*) contains a similar provision as to the recovery from the parent of charges for the meals.

Certain children living in poor law or charitable institutions, or who may have been boarded out by poor law authorities, attend public elementary schools or schools for blind, deaf, defective or epileptic children maintained by a local education authority for an area other than the area to which the children belong. In such cases the net cost of their education falling to be met from rates is recoverable from the local education authority for the area to which the children belong under the Education (Institution Children) Act, 1923 (*n*), and Circular No. 1346 issued by the Board of Education on December 29, 1924. This circular suggests the following formula for ascertaining the net cost falling to be met from rates of educating children in public elementary schools.

- (a) Take Head I. of income (rates) from the Elementary Education Account (Table I. of the Education Account). (See Education Accounts (Annual Statements) Order, 1921.)
- (b) Find the difference between the balance brought forward at the commencement of the year (Head XVI. of income) and the balance at the end of the year (Head XVIII. of expenditure).
- (c) If the balance at the end of the year exceeds the balance at the commencement, deduct the difference from (a) (income from rates). If the balance at the end of the year is less than the balance at the beginning, add the difference to (a) (income from rates).
- (d) Deduct 7 per cent. from the result. This deduction is intended to eliminate that portion of the expenditure which is not attributable to the education of children in public elementary schools—the uniform basis being agreed on a general average of all authorities.

(*k*) See titles BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN; and EDUCATION SPECIAL SERVICES.

(*l*) 7 Statutes 175.

(*m*) *Ibid.*, 176.

(*n*) *Ibid.*, 226.

- (e) Divide the figure mentioned in (d) by the average number of children on the rolls in public elementary schools in the area of the charging authority. The result will represent the cost per child per year of 52 weeks.
- (f) The payment to be made in respect of an individual institution child will be dependent upon the number of weeks (inclusive of holidays) during which he is resident in an institution and is on the roll of a public elementary school, a period of three days and less than seven being taken as a week, and a period of less than three days being disregarded. [368]

It should be noted that sect. 1 (7) of the Act of 1923 (o), forbids the payment of a claim for the reimbursement of the cost of institution children, unless it is made within two years after the end of the financial year during which the attendances on which the claim is based were made. [369]

### THE EDUCATION ACCOUNT

The Education Accounts (Annual Statements) Order, 1921 (p), prescribes the form of yearly statement to be prepared and submitted by a local education authority to the district auditor. It is drawn on the basis of "income and expenditure," but may be used if the accounts of the authority are kept upon the basis of "receipts and payments." The memorandum issued by the M. of H. with the above order contains instructions as to the preparation of the statements, and the section of the memorandum dealing with "Income" and "Expenditure" should be specially noted. A later circular (q) of the M. of H. sets out the modifications of the form required in consequence of the Teachers (Superannuation) Act, 1925 (r).

From these statements the Board of Education ascertain the net expenditure for grant purposes.

The prescribed statement comprises the several tables set out below :

- |       |      |  |
|-------|------|--|
| Table | I.   | Elementary Education—Summary of Revenue Account.   |
| "     | II.  | Higher Education—Summary of Revenue Account.   |
| "     | III. | Elementary Education Revenue Account—Details.  |
| "     | IV.  | Higher Education Revenue Account—Details.  |
| "     | V.   | Loan and Capital Account.  |
| "     | VI.  | Sinking Fund Account.  |
| "     | VII. | Apportionment of Loan Service Charges and Outstanding Loan Debt and Sinking Funds. [370] |

### AUDIT OF ACCOUNTS

The Board of Education do not audit the accounts of a local education authority or an education committee. This work is carried out by district auditors who are appointed by the M. of H. with the consent of the Treasury under sect. 220 of the L.G.A., 1933 (s). While all the accounts of a county council or district council are subject to

(o) 7 Statutes 228.

(p) S.R. & O., 1921, No. 1886.

(q) M. of H. Circular No. 705, June 21, 1926.

(s) 26 Statutes 425.

(r) 7 Statutes 317 *et seq.*

the district auditor's audit, some only of the accounts of most borough councils are so audited. By sect. 123 (2) of the Education Act, 1921 (*t*), separate accounts of receipts and expenditure under that Act must be kept by a borough council and these accounts must be audited by district auditors.

Sect. 219 of the L.G.A., 1933, provides for the audit by a district auditor of the accounts of any committee appointed by a county council or U.D.C. This enactment does not cover a committee of a borough council, but by sect. 130 of the Education Act, 1921 (*u*), where a local education authority entrust the receipts or payments of money to an education committee or the managers of any public elementary school, the accounts are to be accounts of the local education authority, and so subject to district audit, and the district auditor is given the same powers of disallowance, surcharge, etc., with respect to the managers as if they were officers of the local education authority. The same section also provides that where a council with higher education powers entrusts the managers of a school for higher education provided by them with the receipt and payment of money, their accounts are to be considered as accounts of the council, and the district auditor is given the same powers with respect to the managers as if they were officers of the council. [371]

#### MISCELLANEOUS FINANCIAL MATTERS

**Extra-district Children.**—It is sometimes found convenient for children to attend a school maintained by a local education authority other than the authority for the county, borough or district in which they reside.

As regards elementary education, it is usual for local education authorities to enter into an agreement as to the payment to be made for the cost of education of such extra-district children. The most common basis of payment is that laid down for charging the cost of education of Institution Children (*x*), but some authorities agree to base the charges on the cost of educating children in the particular school concerned.

Should the local education authority at whose cost extra-district children are being educated fail to agree with the authority responsible for the children's education as to the terms of payment, then the first-named authority may apply to the Board of Education for a contribution order to be made on the authority responsible (*y*).

In the case of higher education services the normal fees charged for pupils are usually considerably increased for extra-district students, and in some instances the increase is such that the fee charged covers the cost of the education provided. While this practice may not be advantageous educationally, it has been forced on some local education authorities as a safeguard on the interests of their ratepayers, because there is no power given by the Education Acts to make contribution orders for higher education services. But some local education authorities agree to pay, in respect of their extra-district children, that portion of the cost which normally falls on rates, leaving the parents of the pupils to pay the usual in-district fees. [372]

(*t*) 7 Statutes 196.

(*u*) *Ibid.*, 199.

(*x*) See *ante*, p. 184.

(*y*) Education Act, 1921, s. 128; 7 Statutes 198.

**Children and Young Persons Act, 1933 (a).**—Expenditure falling to be met by a local authority under the above Act may fall under three main headings. These are :

(i.) *Remand Homes.*—By sect. 77 of the Act (b), the duty of providing remand homes is placed on the councils of counties and county boroughs, not on local education authorities, and consequently there is no charge to education under this head. [373]

(ii.) *Approved Schools.*—The power of providing and maintaining approved schools is given by sect. 96 of the Act (c) to a local education authority for elementary education as regards children (d) and to the councils of counties and county boroughs as regards young persons, but the attainment of the age of 14 years by a child ordered to be sent to an approved school does not divest the education authority of their powers. Authorities are given power by sect. 80 (e) to combine for the purposes of the establishment, alteration, management, etc., of an approved school.

Under sect. 90 of the Act (f), the local education authority for elementary education named in an approved school order as being the authority within whose district the child was resident or the offence was committed, or the circumstances arose rendering the child liable to be sent to an approved school are responsible for the maintenance of that child. Where such a local education authority do not provide their own school, or in other cases where children are sent to schools not under their control, they are required to contribute 14s. per child per week (g) towards the expenses of the managers of the school at which the children are detained. Under sects. 90, 96 the liability for contributions towards the maintenance of a young person in an approved school similarly rests on the council of the county or county borough in which the young person was resident or with which he was otherwise connected as indicated already.

For further information, see the title APPROVED SCHOOLS, at p. 357 of Vol. I. [374]

(iii.) *Boarding-Out.*—Children committed to the care of a local authority may be boarded out under sect. 84 (3) of the Act (h) with foster parents on such terms as the authority think fit. Expenditure on boarded-out children is limited, for the purposes of Home Office grant, to a maximum of 15s. per child per week.

Liability for the maintenance of young persons boarded out rests on the councils of counties and county boroughs. [375]

Grants are paid by the Home Office under sect. 104 of the Act (i) to local education authorities for elementary education in their capacity as managers of approved schools provided and maintained by them, and also towards their expenses in connection with children committed to their care. See also *ante*, p. 177. [376]

The Board of Education pay grants to local education authorities for elementary education in respect of the additional expenditure

(a) 26 Statutes 168 *et seq.*

(b) *Ibid.*, 216.

(c) *Ibid.*, 232.

(d) "Child" is defined in s. 107 as meaning a person under the age of 14 years.

(e) 26 Statutes 218.

(f) *Ibid.*, 227. See also s. 96 (1); 26 Statutes 232.

(g) Children and Young Persons (Contributions by Local Authorities) Regulations, 1933; S.R. & O., 1933, No. 954.

(h) 26 Statutes 222.

(i) *Ibid.*, 237.

incurred by them in carrying out the powers and duties imposed on them by the Act in connection with children.

Sects 86—89 of the Act (*k*) provide for the payment of contributions by the parents of children and young persons committed to approved schools or to the care of local authorities, and sect. 86 (3) of the Act imposes the duty of collecting such contributions on the councils of counties and county boroughs from all parents for the time being resident in their area. These collections are not imposed on the local authorities as local education authorities (*l*), but in practice it is simpler for the duty to be carried out by officers of education authorities. County councils are empowered by sect. 96 (2) of the Act (*m*) to arrange with the elementary education authorities in their area for the performance by the latter within their respective areas of such powers and duties of the county council as may be agreed, and accordingly the duty of collecting parental contributions is in a number of cases carried out by the councils who are authorities for elementary education.

The Home Office allow a rebate of 10 per cent. from contributions actually collected on account of the cost of collection, and the appearance of this deduction in the revenue account is sufficient to satisfy the Board of Education that the cost of collection has not been charged in the Education Account.

In the accounts of local education authorities the only expenses which appear are those relating to children, which must be treated as expenses of elementary education. Expenses in connection with young persons are the liability only of the councils of counties and county boroughs, to be met as expenses for general county purposes or out of the general rate as the case may be. As respects county councils, expenses must ordinarily be divided between children and young persons, as the former expenses form part of those for elementary education, which is usually a special county purpose, while the latter form part of the expenses for general county purposes. [377]

**National Health and Unemployment Insurance.**—The Acts relating to the above matters apply to a local education authority as to other employers.

Teachers in service under the Teachers (Superannuation) Acts, 1918 to 1933 (*n*), as well as student teachers employed in public elementary schools, are excepted from health insurance by sect. 1 and Part II. of the First Schedule to the National Health Insurance Act, 1924 (*o*), and from unemployment insurance by sect. 1 and Part. II. of the First Schedule to the Unemployment Insurance Act, 1920 (*p*). Contributions are payable in the case of supplementary teachers and other teachers not employed in "recognised" service where the salary does not exceed £250 per annum.

School caretakers and cleaners and school nurses are exempt from unemployment insurance under the provisions of the Act of 1920 already mentioned.

Certificates of exception from national insurance in respect of the employees of a local education authority can be obtained on certain

(*k*) 26 Statutes 223—227.

(*l*) See Board of Education Administrative Memo. No. 113, of February 28, 1934.

(*m*) 26 Statutes 232.

(*n*) 7 Statutes 303 *et seq.*; 26 Statutes 129.

(*o*) 20 Statutes 470, 566. As amended by s. 19 of the Teachers (Superannuation) Act, 1925; 7 Statutes 334.

(*p*) *Ibid.*, 656, 689. As amended as above.

conditions, e.g. where the authority have either adopted the Local Government and other Officers' Superannuation Act, 1922 (*r*), or secure similar pension rights to employees under a local Act. [378]

**Rating of Schools.** *Provided Schools.*—There is no exemption from rating in the case of schools provided by a local education authority, and as rates, excluding education rates, rank for Government grant, it is desirable that assessments should be on a uniform basis. In some areas, the assessment is based upon a fixed sum per school place of the total accommodation. [379]

*Non-provided Schools.*—These schools are exempted from rates by sect. 167 of the Education Act, 1921 (*s*), except to the extent of any profit derived by the managers of the school from the letting thereof. The exemption applies only to "land or buildings used exclusively or mainly for the purpose of the schoolrooms, offices or playground" and does not extend to any part of the premises used as a teacher's residence. [380]

#### LONDON

**Capital Expenditure.**—As in the case of provincial local education authorities the specific approval of the Board of Education must be obtained to every scheme which would involve capital expenditure or in any way increase the liability of the Board to pay additional grant in respect of debt or consequential maintenance charges. [381]

**Maintenance Expenditure.**—The practice followed in London in regard to the submission of estimates and accounts to the Board is similar to that of the provinces.

In rating for the purposes of education the principal difference in London arises from the fact that the metropolitan borough councils have no duties in regard to elementary education apart from the right to appoint managers of schools. In regard to higher education, the City of London aids out of its estates certain public schools and charitable educational foundations and the Woolwich Metropolitan Borough Council has power to aid a polytechnic (London Government Act, 1899, sect. 19 (3); Education Act, 1921, sect. 170 (21) (*t*); L.C.C. (General Powers) Act, 1931, sect. 55). The absence of education powers in the metropolitan boroughs results in the rate covering education expenditure being levied equally over the whole of the administrative county; no item of the rate being levied on any separate part or parts of the county. (As to this, see sect. 122 of the Education Act, 1921 (*u*), which excepts London from the provisions of the section dealing with the allocation of certain charges to certain parts of a county.)

In the sphere of grants from Government departments, London is subject to similar regulations to those affecting the provinces, and is entitled to all grants (where the duties are performed) except those specially designed to aid necessitous areas. [382]

(*r*) 10 Statutes 863.

(*t*) 11 Statutes 1236; 7 Statutes 214.

(*s*) 7 Statutes 211.

(*u*) 7 Statutes 195.

## EDUCATION INSPECTOR

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*See also title BOARD OF EDUCATION, generally and particularly at p. 134 of Vol.2.*

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All public elementary schools and secondary Schools in receipt of grants from public funds are open to inspection by H.M. inspectors, who work under the direction of the Board of Education (a). In addition to these inspectors of the Central Authority, a number of local education authorities appoint their own inspectors of schools. This, on first consideration, may seem to be a duplication of duties, but it is not essentially so, for the duties of the two bodies of inspectors are not necessarily parallel. The Board's inspectors, for example, do not supervise the religious instruction given in schools, but a local education authority may desire to obtain detailed reports on religious instruction, in which case they would instruct their inspectors accordingly.

The advantages of local inspection arise from two factors :

- (i.) local inspectors are under the direct control of the local education authority and carry out the instructions of that body, but the authority have no power to require a report to be supplied by a member of the staff of the Board of Education ;
- (ii.) a local inspector is usually responsible for a smaller area than a Board of Education inspector, with the result that he visits the schools more frequently, and thus has a more intimate knowledge of the schools and of the capabilities of the respective head and assistant teachers.

Local inspectors, through this more intimate knowledge of the schools, are well able to advise their authority on such matters as :

- (i.) staffing and promotion ;
- (ii.) building of new schools, or the enlargement of existing schools, and the locality in which additional accommodation is needed ;
- (iii.) all matters of administration which require the Board's approval. The administrative officials cannot always afford the time to visit schools and the various districts within the authority's area. An inspector can do so, although probably he knows them thoroughly through frequent visits. Thus he can usually prepare detailed particulars for the authority to submit to the Board of Education for their approval.

[383]

Some local education authorities appoint specialist inspectors for such subjects as music, science, handicraft, physical training, domestic science and art. These inspectors usually demonstrate and advise, in addition to inspection, and frequently conduct or organise courses for teachers in their special subjects.

The Board of Education also have specialist inspectors, but their staff of inspectors of public elementary and secondary schools usually deal with most of the subjects in the curriculum.

Neither the Board of Education nor a local education authority have the power to inspect a private school until requested to do so, under sect. 184 (3) of the Education Act, 1921 (*b*), by the governing body, or if there is no governing body by the headmaster.

Unless a school is open to inspection by the local education authority or by the Board of Education, and satisfactory registers of attendance are kept, the attendance of a child at the school cannot be used as a defence in proceedings for non-attendance at school (*c*). [384]

**London.**—There appear to be no statutory differences between London and the Provinces. There are, however, administrative differences, inasmuch as, owing to the fact that the L.C.C. maintains its own staff of divisional, district and specialist inspectors, the Board's inspection is carried out on a much smaller scale in London than elsewhere. [385]

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(*b*) 7 Statutes 201.

(*c*) Education Act, 1921, s. 147; 7 Statutes 204.

# EDUCATION SPECIAL SERVICES

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*See also titles :*

ACCIDENTS ;  
 ADOPTION OF CHILDREN ;  
 BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN ;  
 CLINICS ;  
 EDUCATION ;  
 GAMES, PROVISION FOR ;

\* HIGHER EDUCATION ;  
 INFANTS, CHILDREN AND YOUNG PERSONS ;  
 MATERNITY AND CHILD WELFARE ;  
 OPEN AIR SCHOOLS ;  
 OPEN SPACES ;  
 PUBLIC HEALTH.

\* As to full time courses of higher education for Blind, Deaf, Defective or Epileptic Children.

## INTRODUCTION

The expression "special services" is one that figures frequently in education administration, for it connotes something beyond what may be termed the bare provision of a system of public education. A review of the last half-century would show a process of gradual

addition to the minimum with which the service commenced. In this period local education authorities have been either required or empowered to add to the purely instructive side of their work a variety of social services which are the complements of successful class teaching and without which a complete education would not be provided. It will be seen from what follows that in general the common factor of these special services is "health."

The expression "special services" as used in the Board of Education (Special Services) Regulations, 1925 (*a*), includes the following : (1) The school medical service, which includes both inspection and treatment for children attending public elementary schools. (2) The medical inspection and treatment of children and young persons attending places of higher education. (3) The provision of meals for children attending public elementary schools. (4) Elementary schools for blind, deaf, defective and epileptic children certified by the Board of Education. (5) Full-time courses of higher education for blind, deaf, defective and epileptic students. (6) Nursery schools. (7) The organisation of physical training. (8) Play centres.

Most of the statutory provisions relating to these will be found in the Education Act, 1921 (*b*), and this Act will often be referred to as "the Act" in this article.

Following this introduction, each of the above subjects will be dealt with in detail, with the exception of those that are the subject of separate articles elsewhere. [386]

#### GENERAL CONDITIONS RELATING TO SPECIAL SERVICES

The following are among the general conditions which are imposed by the Board of Education in virtue of their power under sect. 118 of the Act (*c*), whereby they may make regulations for the payment to local education authorities of grants out of moneys provided by Parliament.

Every local education authority must appoint a school medical officer, as well as such other medical officers, nurses and other persons as may be necessary for the efficient discharge of the authority's functions, but before an authority can appoint a school medical officer, his name must be submitted to the Board of Education for approval (*d*).

When the authority are making arrangements for special services for their area they must ensure that they are suitable to local needs and circumstances, and must be properly related to the other services of education and public health in the area. Due regard must also be had to the claims of each special service, so that the authority's provision as a whole may form a comprehensive and well-balanced scheme for promoting the physical and mental development of all children in the area. [387]

Should the Board of Education so desire, the authority must submit to them annually a statement showing their proposals in regard to special services for the year commencing on April 1.

A school medical officer's report describing and tabulating the work of himself and his staff in respect of special services must be submitted annually to the Board of Education. These annual reports besides being of considerable interest are of great value as a means of bringing

(*a*) S.R. & O., 1925, No. 835.

(*b*) 7 Statutes 130.

(*c*) *Ibid.*, 193.

(*d*) S.R. & O., 1925, No. 835, Art. 2.

to the notice of the public (comment thereon is usually made in the local press) the volume of work dealt with by the school medical service, and also of enabling the school medical officer critically to review the service for which he is responsible.

Conditions are laid down with which compliance is necessary in the case of a special service institution, which is not provided by an authority. These require that any premises—such as clinics, play centres, etc.—used for the purpose of special services must be suitably situated, healthy, safe in case of fire, adequately lighted, warmed, ventilated, cleaned and drained, adequately equipped and generally suitable for the purposes for which they are required. [388]

When a local education authority propose to acquire a site, provide new premises or substantially enlarge or alter existing premises for the purpose of special services, the proposal must be submitted to the Board of Education with an estimate of the cost, and full particulars must be submitted when it is proposed to incur considerable expenditure on equipment.

It is essential that the teaching and other staff employed in special schools shall be sufficient and suitable, and they must be such as the Board of Education may from time to time require. As in the case of teachers in public elementary and secondary schools, if a teacher employed in a special school is convicted of a criminal offence or his engagement is terminated, whether by way of dismissal or resignation, on account of misconduct or grave professional default, the facts must be communicated to the Board of Education.

The Board of Education have issued an administrative memorandum, No. 52, dated March 29, 1927, dealing with "Qualifications of the Full-time Teaching Staff of Special Schools."

If any fees or other charges are made in connection with a special school, the approval of the Board of Education should be obtained if they so require. [389]

If the sanitary authority of the district, or any two members of that authority acting on the advice of the M.O.H., require either the closure of any premises used for the purpose of a special service school or the exclusion of certain pupils therefrom for a specified time with a view to preventing the spread of disease or any danger to health, the requirement must be at once complied with (e). [390]

#### MEDICAL INSPECTION AND TREATMENT

**General Arrangements.**—One of the most important developments in the education service has been the provision of medical inspection and treatment, for sect. 80 (1) of the Education Act, 1921 (f), places a duty on a local education authority for elementary education of making or otherwise securing adequate and suitable arrangements for the health and physical condition of children educated in public elementary schools. This duty does not therefore extend to children attending schools which are neither provided nor maintained by the local education authority, e.g. "private" schools. The section requires that the arrangements should be sanctioned by the M. of H. (g) and should provide for the medical inspection of children immediately before, or at the time of, or as soon as possible after, their admission to school and on such

(e) S.R. & O., 1925, No. 835, Art. 13.

(f) 7 Statutes 174.

(g) See post, pp. 197, 198, as to arrangements with Board of Education.

other occasions as the Minister may direct. By regulation (h) it has been directed that medical inspection of school children shall take place as soon as possible in the twelve months following (i.) their first admission to a public elementary school, (ii.) their attaining the age of eight years, and (iii.) their attaining the age of twelve years.

The arrangements made by a local education authority, subject to the sanction of the Board of Education, for attending to the health and physical condition of children attending public elementary schools must include (i) arrangements for (i.) the following up of cases of defect found in the course of medical inspection; (ii.) the detection and prevention of uncleanliness; (iii.) the medical treatment of defects of eyes and teeth, minor ailments and enlarged tonsils and adenoids.

[391]

In regard to pupils attending schools other than public elementary schools, a local education authority for higher education *must* provide for the medical inspection of children attending (i.) secondary schools provided by them; (ii.) any schools to the governing body of which, in pursuance of any scheme made under the Welsh Intermediate Education Act, 1889 (k), any payments are made out of a general fund administered by a local education authority as governing body under that Act and any school of which a local education authority are governing body under that Act; (iii.) continuation schools under the direction and control of the authority; (iv.) such other schools or educational institutions (not being elementary schools) provided by them as the M. of H. may direct (l). [392]

A local education authority for higher education *may*, with the sanction of the M. of H., make arrangements for attending to the health and physical condition of children and young persons attending the above-mentioned schools and institutions. The authority *may* also provide for the medical inspection of children and young persons under eighteen years of age attending (i.) other schools or educational institutions provided by the authority; (ii.) any other school or educational institution, whether aided by the authority or not, where the authority are requested by or on behalf of the managers to provide for the medical inspection of pupils therein (m).

If a local education authority does provide medical inspection for children and young persons attending places of higher education, they should inspect them during the term after their admission to the school or institution and in each subsequent year of their age during the period of their attendance, but it is not necessary for an annual medical inspection to be made of children below the age of twelve (n).

A local education authority may, with the sanction of the Board of Education, make arrangements for attending to the health and physical condition of pupils attending their secondary schools and other educational institutions, and any other schools or educational institutions, whether aided by the authority or not, where the authority

(h) Board of Education Special Services Regulations; S.R. & O., 1925, No. 835, Art. 17.

(i) *Ibid.*, Art. 18.

(k) 7 Statutes 265.

(l) S.R. & O., 1925, No. 835, Art. 19, and Education Act, 1921, s. 80 (2); 7 Statutes 174.

(m) S.R. & O., 1925, No. 835, Art. 20, and Education Act, 1921, s. 80 (3); 7 Statutes 175.

(n) *Ibid.*, Art. 21.

are requested by or on behalf of the managers to make these arrangements (o). [393]

From the foregoing it will be seen that a local education authority *must* provide both medical inspection and treatment for children attending the public elementary schools, but although they must also provide medical inspection for children attending secondary and similar schools, they are not bound to provide treatment, although they may do so.

In the exercise of their powers to provide for the medical inspection or treatment of children or young persons, a local education authority may encourage and assist the establishment or continuance of voluntary agencies and may associate themselves with representatives of voluntary associations for the purpose (p). They must not, however, establish a general domiciliary service of treatment by medical practitioners for children or young persons, and in making arrangements for the medical treatment of children and young persons, a local education authority should consider how far they can avail themselves of the services of private medical practitioners (p). [394]

**Obligation to Submit to Medical Examination or Inspection.**—It is interesting to note that sect. 80 of the Act refers to the "medical inspection" of children and young persons, but in connection with the cleansing of verminous children, in sect. 87 of the Act (q) the term "examine" is used. The same term is also used in sect. 55 (2) and (5) of the Act (r) in relation to ascertaining what children are defective or epileptic children.

The use of separate expressions was perhaps considered desirable by the Legislature in order to distinguish between optional and compulsory medical inspection, for although it is the duty of a local education authority to provide both medical inspection and treatment for the children attending their public elementary schools and for the medical inspection of those attending secondary schools and other educational institutions, sect. 80 does not impose an obligation on a parent to submit his child to either medical inspection or treatment. Although from the point of view of legal construction, there is a difference between "inspection" and "examination," yet there is little distinction from the medical standpoint, and the two terms might almost be considered synonymous. But although a parent cannot be compelled to cause his child to obtain the advantage of the medical facilities provided by an authority, the local education authority for elementary education may prosecute a person under sect. 1 of the Children and Young Persons Act, 1933 (s), where a person legally liable to maintain a child has failed to provide adequate medical aid for him (t). Thus a local education authority may also prosecute (*inter alia*) a person who has the custody or care of a child and neglects

(o) S.R. & O., 1925, No. 835, Art. 22.

(p) Education Act, 1921, s. 80 (4); 7 Statutes 175.

(q) 7 Statutes 177; and see *Fox v. Burgess*, [1922] 1 K. B. 623; 19 Digest 570, 104.

(r) 7 Statutes 161, 162.

(s) 26 Statutes 172.

(t) This power was given to local education authorities by s. 89 of the Education Act, 1921, but this section was repealed by s. 88 and the Fourth Schedule of the Children and Young Persons Act, 1932. Ss. 96 (1) and 98 of the Children and Young Persons Act, 1933 (26 Statutes 232, 234) give to a local education authority a general power of instituting proceedings under that Act or under Part I. of the Children Act, 1908 (9 Statutes 795).

him in such a way as to cause him unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or a limb, or organ of the body, and any mental derangement). [395]

Under the corresponding provision in sect. 12 of the Children Act, 1908 (a), it was held that where a child was suffering in her health through adenoids, for which the only remedy appeared to be a surgical operation, the parent, who refused to give his consent to the operation, had failed to provide adequate medical relief for his child (b). It was also held that the putative father of a child, who is cohabiting with the child's mother, but against whom no affiliation order has been made, may be deemed to have the custody, charge or care of the child within the meaning of sect. 12 of the Act of 1908, although the father was not one of the persons enumerated in sect. 38 (2) of the Children Act, 1908 (c) as presumed to have the custody, charge or care of a child (d).

In another case (e) it was decided that where a husband is separated from his wife by agreement, he is criminally liable for neglect of the children if, to his knowledge, she neglects them, although he remits to her sufficient money for the support of the children. [396]

The Chief Medical Officer of the Board of Education, in his Annual Reports, has referred to police court proceedings which have been successfully taken by local education authorities against parents who persistently neglected their children. Convictions have been obtained for failure to provide children with spectacles or dental treatment; for neglect to obtain proper treatment for children suffering from scabies, discharging ears or marked deformities; for persistent neglect of verminous conditions; and for causing a child to work in a rag warehouse when he was undergoing treatment in a tuberculosis dispensary.

The foregoing cases show that the absence of a power of compelling a parent to cause his child to be medically examined does not entirely leave a local education authority powerless, when there is clear evidence that such failure on the part of the parent is causing his child unnecessary suffering or injury to health.

Reference has already been made (*ante*, p. 196) to the obligation of a parent to cause his child to submit to examination for vermin or for the purpose of ascertaining whether a child is defective or epileptic. In the latter case, failure on the part of the parent to comply with the requirements of the local education authority renders him liable under sect. 55 (5) of the Act of 1921 (f) to a fine not exceeding £5. But there is no similar obligation relating to blind and deaf children. [397]

**Arrangements between the Board of Education and M. of H.—** It will have been observed that sect. 80 of the Act (g) refers to arrangements sanctioned by the M. of H. in connection with medical inspection and treatment in schools, but sect. 3 (1) (d) of the M. of H. Act, 1919 (h), allowed the Minister to make arrangements with the Board of Education by which his powers and duties may be performed by the Board on

(a) 9 Statutes 800. Repealed by the Children and Young Persons Act, 1933.

(b) *Oakey v. Jackson*, [1914] 1 K. B. 216; 15 Digest 855, 9395.

(c) Now s. 17 of the Children and Young Persons Act, 1933; 26 Statutes 180.

(d) *Liverpool Society for the Prevention of Cruelty to Children v. Jones*, [1914]

3 K. B. 813; 15 Digest 855, 9397.

(e) *Poole v. Stokes* (1914), 78 J. P. 231; 15 Digest 855, 9399.

(f) 7 Statutes 162.

(g) *Ibid.*, 174.

(h) 3 Statutes 417. See also Education Act, 1921, s. 16; 7 Statutes 137.

his behalf under such conditions as he may think fit. He has accordingly arranged with the Board of Education by letter to secure continuous and effective co-operation and co-ordination between the two departments, not only in respect of medical inspection and treatment, but also in respect of the other functions of the Board of Education and local education authorities which directly or indirectly concern the health of children and young persons.

This matter was dealt with in a circular of 1919 addressed to local education authorities (i). Under the arrangements, the M. of H. retained his ultimate right to determine what is necessary in regard to the work of medical inspection and treatment, and the standards to be adopted from time to time in regard to the character, adequacy and efficiency of the provision made. By this means, effective control both of the work and of the way in which it is done is in the hands of the M. of H. [398]

Subject to these rights, the Board of Education are responsible for receiving and approving on behalf of the M. of H. all schemes of local education authorities and for the payment of grants in aid of medical inspection and treatment. Under these arrangements all communications relating to medical inspection and treatment should be addressed to the Board of Education.

The circular concludes by stating that the two departments are actuated by the desire that there shall be a comprehensive, consistent and progressive policy for promoting the health and physical welfare of children and young persons, and that that policy is to be reflected in the administration of the departments, so as to facilitate to the utmost extent the development of the health services by local authorities whether under the Education Acts, the P.H.A., the Maternity and Child Welfare Act, 1918 (k), or otherwise. [399]

#### **Liability of Local Education Authority for acts of School Medical Staff.—(See Vol. I., p. 19.)**

**Recovery of Costs of Medical Treatment.**—Where a local education authority provide for the medical treatment of the children or young persons attending schools or institutions, the parent must be charged for that treatment (l). The amount of the charge is a matter for the local education authority, but it must not exceed the actual cost of the treatment.

In the event of the parent failing to make the required payment, the amount may be recovered summarily as a civil debt. The local education authority may, however, relieve the parent of his duty to pay the amount claimed, if they are satisfied that his inability to pay is due to circumstances other than his own default (m).

Although sect. 37 of the Act (n) provides that no fees shall be charged or other charges of any kind made in any public elementary school, the right to charge parents for the medical treatment of children is saved by sub-sect. (3) of the section. [400]

(i) Circular 1136, November 28, 1919. Board of Education, Arrangements under s. 3 (1) (d) of the M. of H. Act, 1919 (repealed by the Education Act, 1921, and replaced by s. 16 of that Act; 7 Statutes 137).

(k) 11 Statutes 742.

(l) Education Act, 1921, s. 81 (1); 7 Statutes 175.

(m) *Ibid.*

(n) 7 Statutes 150.

**Attendance Registers.—Medical Treatment, etc., during School Hours.**—Although the medical inspection of school children and the treatment at clinics usually takes place during the ordinary school hours, in some areas this service is available both before and after these times. But should a child be absent from school or from secular instruction during school hours and thus fail to obtain the necessary period of secular instruction required by the Education Code (*i.e.* one-and-a-half hours for infants and two hours for older children each session) to constitute an attendance, the Education Code provides (*o*) that in this minimum period may be included any part of the school hours occupied by the school medical service.

If either medical inspection or treatment takes place away from the school and a child is thus absent from school at the time and the attendance registers should be closed for the session, he should be given an "absent" mark in the registers. When it has been verified (by referring to registers of attendance at clinics, etc.) that such a child's absence has been due to his being medically examined or receiving medical treatment through the school medical service, then there should be inserted in the mark of absence the letter "M" or "T" signifying, respectively, absence due to medical inspection or medical treatment. All attendances so registered must be added to the total attendances of each child concerned at some time not later than the end of each quarter (*p*). **[401]**

**Boarded-Out Children.**—The Children and Young Persons (Boarding-Out) Rules, 1933 (*q*), require a local education authority to arrange that medical treatment, including dental treatment, shall be available for each foster child. Every foster child must, within a month of being boarded out, be carefully examined by a doctor who is responsible for his medical attention, and a full report of such examination must be forwarded to the local authority. **[402]**

**Clinics.**—The clinic is an integral part of the school medical service for it is here that the school medical officer and the school nurses carry out the major part of their work. Most modern schools are provided with a medical inspection room or inspection clinic, where the routine medical inspections already referred to (*ante*, p. 194) can be conducted. Actual treatment is not as a rule given here, but the medical inspection of children and the consultation between the school medical officer and parents render it a valuable part of the medical service.

The minor ailments clinic is one of the most popular branches of this work. At such a clinic both treatment and advice are available. The more serious cases are referred to specialists, such as dental and ophthalmic surgeons who usually give their treatment at specially equipped clinics, or the parent is advised to consult his own medical practitioner or attend the out-patient department of a hospital. At some clinics, orthopaedic or X-ray (ringworm) cases are treated, and skin conditions, minor defects of eyes or ears and slight injuries are cured. See, further, the title CLINICS, at p. 230 of Vol. III. **[403]**

(*o*) Art. 21 (a).

(*p*) Board of Education Administrative Memorandum, No. 51, January, 1927, para. 12.

(*q*) S.R. & O., 1933, No. 787, in Art. 19.

### DENTAL INSPECTION AND TREATMENT

The Board of Education (*r*) have laid it down that the arrangements made by an authority for attending to the health and physical condition of children attending public elementary schools must include arrangements for the treatment of teeth.

This branch of the medical service has received considerable attention of late years and most local education authorities have now full-time dental surgeons. Dental clinics have been established and treatment is given as the result of defects found on inspection. A number of local education authorities charge a flat rate for treatment of whatever nature given during a fixed period, while others make a nominal charge for the actual treatment given, such as 1s. per extraction or per attendance.

A parent of a child who receives dental treatment must make some payment, unless the local education authority are satisfied that he is unable by reason of circumstances other than his own default, to pay the amount demanded by them (*s*).

Some local education authorities make arrangements for supplying tooth brushes and dentifrice at nominal charges to school children.

Much valuable work is being done in the education of children in the hygiene of the teeth. Class lessons, the cinematograph and demonstration with large models are proving very helpful. Routine annual inspections have been found desirable in order to ensure the effectiveness of this service.

As in the case of medical treatment, so it is with dental treatment, in that the authority have no power to enforce treatment (*t*), but there seems to be a growing desire on the part of parents to avail themselves of the facilities for treating the dental defects of their children revealed by the routine inspections of the school dental surgeon.

Where children are boarded out, the local authority must arrange for their dental treatment (*u*).

The Board of Education have made regulations prescribing the conditions on which a person who is not a registered dentist may perform minor dental work in the school medical service of a local education authority under the supervision of a registered dentist (*a*).

[404]

### CLEANSING OF VERMINOUS CHILDREN

A local education authority for elementary education may under sect. 87 (1) of the Act (*b*) direct their medical officer, or any person provided with the authority in writing of the medical officer, to examine in any public elementary school provided or maintained by them the person and clothing of any child attending the school. If required the

(*r*) Board of Education (Special Services) Regulations, 1925; S.R. & O., 1925, No. 835, Art. 18.

(*s*) Education Act, 1921, s. 81 (1); 7 Statutes 175.

(*t*) *Ibid.*, s. 81 (2).

(*u*) Children and Young Persons (Boarding-Out) Rules, 1933; S.R. & O., 1933, No. 787, Art. 19.

(*a*) Conditions approved by the M. of H. under s. 1 (3) (c) (11 Statutes 763) of the Dentists Act, 1921, for the performance of minor dental work in the School Medical Service of Local Education Authorities, etc. Board of Education Circular No. 1279, dated August 17, 1922.

(*b*) 7 Statutes 177.

person, usually a school nurse, provided with such a medical officer's authority, must produce it.

Should such an examination reveal that the person or clothing is infected with vermin or is in a foul or filthy condition, the local education authority may give notice in writing to the parent or guardian of the child requiring the child and the clothing to be cleansed within twenty-four hours after the receipt of the notice. In order to assist persons who are served with a notice of this nature, the local education authority must give him written instructions describing the manner in which the cleansing may be best effected (c). **【405】**

It should be observed that a local education authority has power to "direct" their medical officer to carry out an inspection of this nature. When such a direction has been given there is an obligation on the part of a parent or guardian to cause the child to submit to an inspection. The refusal of a child, under the instruction of the father, to allow inspection is insubordination for which the father is responsible, and if a child is excluded from school on the ground of insubordination, then the father has failed to cause his child to attend school as required by the bye-laws (d). It was also held that it is not the duty of a local education authority to use force in order to examine a child.

If a parent or guardian who has been served with a notice to have the person or clothing of his child cleansed fails to comply within twenty-four hours, the medical officer or some one authorised by him (e) may remove the child named in the notice from school and may have the child and its clothing properly cleansed in suitable premises and with suitable appliances. No warrant is necessary to give authority for the conveyance to, and the detention at, the premises where the cleansing is effected, for the Act itself is sufficient authority (f). **【406】**

Where the sanitary authority within the district of a local education authority have provided, or are entitled to the use of, any premises or appliances for cleansing the person or clothing of persons infested with vermin, the sanitary authority must, if so required by the local education authority, allow them to use the premises and appliances for the purpose of cleansing children (g). Payment for this service may be fixed by agreement between the two authorities, and if they fail to agree the matter may be settled by the M. of H. **【407】**

A parent is liable to a fine not exceeding 10s. if, after his child has been cleansed in accordance with the arrangements, he allows his child to get into such a condition that a similar proceeding is again necessary (h). The examination and cleansing of girls must be carried out either by a qualified medical practitioner or by a woman bearing the written authority of the medical officer previously referred to (i). In sect. 87, the term "medical officer" means any officer appointed under the Act for the purpose of the medical inspection of children attending a public elementary school (k). **【408】**

(c) Act of 1921, s. 87 (5); 7 Statutes 178.

(d) *Fox v. Burgess*, [1922] 1 K. B. 623; 19 Digest 570, 104.

(e) The authorisation in writing must be produced if required.

(f) Act of 1921, s. 87 (2); 7 Statutes 177.

(g) *Ibid.*, s. 87 (3).

(h) *Ibid.*, s. 87 (4).

(i) *Ibid.*, s. 87 (6).

(k) *Ibid.*, s. 87 (7).

### CONVEYANCE OF CHILDREN TO AND FROM SCHOOL

Proposals to convey children to school first arose owing to the distance from an ordinary school of the homes of many pupils, a condition frequently occurring in rural areas. But since the Hadow Report, which suggested the segregation of children over the age of eleven in senior, central, secondary or similar schools, the question has assumed a new aspect. With the conversion of a group of "all standard" schools into a group comprising a senior and a number of contributory junior schools, greater distances have had to be travelled by many pupils of the senior school, and as a result local education authorities have been faced with the problem of conveying children all or a part of the way to school. Conveyance of this nature is sometimes very expensive, and is therefore only provided by some local education authorities after considerable pressure has been brought to bear upon them by parents. [409]

**Power to Provide Conveyance.**—The Education Act, 1921, does not impose on local education authorities a duty to provide conveyances or to pay reasonable travelling expenses, but sect. 88 (*l*) allows them to provide these facilities for teachers, children or other scholars attending school or college whenever the council consider such provision or payment is required by the circumstances of their area or of any part of it.

It will thus be seen that this power applies not only to pupils attending public elementary schools, but also to those attending secondary, technical and art schools and other places of education.

The same section permits a local education authority for elementary education to provide guides for children who, in their opinion, are unable to attend school by reason of any mental or physical defect without guides. This will apply in most cases to children attending special day schools or classes for defective, etc., children under Part V. of the Act (*i.e.* blind, deaf, defective and epileptic children), but the power is not limited to these children and may be exercised in respect of children who, if a guide were not provided, would otherwise be prevented from attending an ordinary public elementary school. [410]

**Need of Care and Supervision.**—If a local education authority, in pursuance of their power, do provide a vehicle to convey children to school it must be reasonably safe, and if young children are conveyed a conductor as well as a driver should be provided (*m*). It is well settled that a person who provides a facility for the use of another is bound to secure that it shall be reasonably safe for the purpose for which it is intended, even though the person using it does so only by the permission or consent of the person providing it, and has no legal claim to the use of it (*n*).

In the Hertfordshire case cited above it is noteworthy that the child plaintiff was injured through falling out of the vehicle, owing to the negligence of the defendant council in not providing a conductor (*o*).

(*l*) 7 Statutes 178.

(*m*) *Shrimpton v. Herts C.C.* (1911), H. L., 104 L. T. 145 ; 19 Digest 556, 19.

(*n*) *Ibid.*

(*o*) Lord LOREBURN, L.C., said : "Where you have little children 5, 6 or 7 years of age, up to 10 or 12 and send them in a conveyance such as has been described (*i.e.* a brake), without any one to look after them, I should be very much disposed to say, if I were on the jury myself, that it was not a reasonable or proper way of conveying them to school."

The House of Lords found for the plaintiff—reversing the decision of the Court of Appeal who held that the defendants were not liable because the plaintiff was a volunteer and there was no “trap”—although the child was not one of those for whom the vehicle was provided.

As many of the vehicles now provided are motor coaches, there appears to be even greater need for safeguarding the children from accidents arising from opening doors, etc., during transit. [411]

**Distance from School as a Reasonable Excuse.**—It is a reasonable excuse for failure on the part of a parent to cause his child to attend school that there is no public elementary school open which the child can attend within a distance of three miles (or such less distance as the bye-laws may prescribe) measured according to the nearest road from the residence of the child (p). But this excuse ceases to be reasonable if the local education authority exercise their power and provide a suitable means of conveyance, not necessarily for the whole distance, but between a reasonable distance of the home and a public elementary school (q). It is presumed that a “reasonable distance” would be one that would leave the child to walk, or travel at its parents’ expense, a distance no greater than that stated in the bye-laws, i.e. not exceeding three miles, or less if so provided. [412]

**Defective and Epileptic Children.**—Where a child is defective or epileptic within the meaning of Part V. of the Act, and where there is a suitable special class or school within reach of the child’s residence, a parent of such a child over the age of seven is not excused from his duty to cause it to receive efficient elementary instruction merely because it is necessary for the child to travel in a conveyance or with a guide (r). [413]

**Cost Charged to Parishes Concerned.**—Not more than three-fourths of the expenses incurred by a county council in providing means of conveyance for teachers or children attending a public elementary school may, if they think fit, be charged on the parish or parishes which, in the opinion of the council, are served by the school (s). Many local education authorities prefer not to charge differential rates of this nature. [414]

#### PROVISION OF SCHOOL MEALS

**Introduction.**—The provision of school meals is a matter that has been engaging the attention of local education authorities to a greater extent of late than it did even a few years ago. The incidence of unemployment has probably been the chief factor in causing this, as has also the desirability of creating a higher standard of nutrition in children than too often is found, particularly in the “depressed” areas.

Many local education authorities therefore avail themselves of the powers granted by the Education Act, 1921, to aid school canteen committees and to provide meals. Should they so desire, a local education authority for elementary education may take steps under sect. 82 of the Act (t) for the provision of meals for children attending

(p) Act of 1921, s. 49 (b); 7 Statutes 157.

(q) *Ibid.*, s. 49 proviso.

(r) *Ibid.*, s. 53; 7 Statutes 160.

(s) *Ibid.*, s. 122 (1) (c); 7 Statutes 195.

(t) 7 Statutes 175.

their schools, not only on school days but on other days as well (*u*). For this purpose they may associate themselves with any committee (called a "school canteen committee") on which they are represented and they may aid that committee by providing the land, buildings, furniture, apparatus, officers and servants which are necessary for the organisation, preparation and service of meals. They must not, however, incur any expense in the purchase of food to be supplied at these meals, except in the cases mentioned *infra*. [415]

**Special Conditions to be Observed.**—Where meals are provided for children attending public elementary schools, the following special conditions are required by the Board of Education (Special Services) Regulations, 1925 : (i.) the children admitted to the meals must be properly selected ; (ii.) the dietary and the arrangements for the service and supervision of the meals must be sufficient and suitable ; (iii.) arrangements must be made for recording the effect of the meals on the physical and mental condition of the children ; (iv.) provision must be made for associating the school medical service with the planning and administration of the arrangements. [416]

**Recovery of Cost of Meals.**—When meals are provided, the parent of every child who is supplied with a meal must be charged an amount which may be fixed by the local education authority (*w*). In the event of a parent failing to make the necessary payment, the local education authority must demand payment and may recover the amount summarily as a civil debt. If, however, they are satisfied that the parent's failure to pay is by reason of circumstances other than his own default, they may remit the payment, but apart from this, the duty of the local education authority to require payment is imperative (*w*).

Of the money so collected or recovered, the authority must pay over to the school canteen committee the sum which they consider to represent the cost of food provided by the committee, less a reasonable deduction for the expenses of recovery (*a*). [417]

**Power of Local Education Authorities to Defray the Cost of Food.**—As a general rule, the parent of a child who receives a meal provided through a school canteen committee must defray the cost, but where a local education authority resolve that there are children attending their public elementary schools who are unable by reason of lack of food to take full advantage of the education provided for them, and have ascertained that funds, other than public funds, are not available or are insufficient to defray the cost of food provided, they may themselves purchase food for this purpose (*b*).

It will be seen that the expression "unable by reason of lack of food" may be given a very wide interpretation. It may be read as meaning that until a child has been found to be so hungry that he cannot possibly do school lessons, no food should be provided by the authority. On the other hand, perhaps, it may mean that if the family budget shows that there cannot be sufficient money available to feed the children adequately, then from this fact alone it should be inferred that the child is suffering from lack of food and consequently is unable to take full advantage of the education provided. As a matter of practice, the two extremes quoted and many intermediate readings are used as

(*u*) S.R. & O., 1925, No. 835, Art. 23.

(*w*) Act of 1921, s. 83 (1) ; 7 Statutes 176.

(*a*) *Ibid.*, s. 83 (2).

(*b*) *Ibid.*, s. 84.

the basis on which local education authorities exercise their power to provide meals. A liberal interpretation from the child's point of view seems now to prevail in distressed localities. [418]

Practice has also disclosed that "lack of food" and "malnutrition" are not synonymous. Malnutrition may be due to a variety of causes (such as an inappropriate diet, weakness or disease) of which insufficient food may or may not be one.

The collection and recovery of the cost of meals provided under sect. 84 sometimes presents a difficult problem. Where free meals are provided to all school children in a family and the sum per head available for food falls below a certain minimum, then the question of parent's contribution will not arise. But in cases where food (which in some instances consists of milk or cod liver oil) is provided directly, and the school medical officer certifies that the child is suffering from lack of food, then the question arises whether the parent should pay all or some of the cost, or whether it should be borne by the local education authority. Clearly in these circumstances, the finances of the parent should be scrutinised by the authority, in order to decide whether failure of the parent to pay should be attributed to his own default or not. (For the provision of milk for children in connection with schools, see also titles MATERNITY AND CHILD WELFARE and MILK AND DAIRIES.) [419]

**Teachers Supervising Meals, etc.**—No teacher in a public elementary school can be required as part of his duties to supervise or assist, or to abstain from supervising or assisting, in the provision of meals or in the collection of the cost incurred (c). Although this safeguard is provided in the Act, a large number of teachers do volunteer for the duties entailed in feeding school children. [420]

#### AFTER-CARE

**Introduction.**—The term "after-care" is one which is applied to that branch of the education service which has for its aim the care of young persons during the years immediately following their leaving school. This service falls naturally into two parts: first, advising on and finding employment for these young persons and, secondly, the "social after-care" as it is sometimes termed, which is concerned chiefly with the wide problem of the social environment and condition of the same young persons.

The first of these comes under the head of "Choice of Employment." [421]

**Choice of Employment.**—Sect. 81 of the Unemployment Insurance Act, 1935 (d) enables local education authorities for higher education to make arrangements, subject to the approval of the Minister of Labour, for giving to boys and girls under the age of 18 assistance with respect to the choice of suitable employment by means of the collection and communication of information and the furnishing of advice.

Provision is made by sect. 81 (3) of the Act of 1935 for co-operation between the council of a county and the council of a non-county borough or urban district, who are also a local education authority for elementary education, for exercising the county council's powers under this head or for co-operation between them. [422]

(c) Act of 1921, s. 85; 7 Statutes 176.

(d) 25 Geo. 5, c. 8.

Seet. 81 (1) of the Unemployment Insurance Act, 1935 (e), provides that a local education authority may exercise these powers only in accordance with a scheme to be approved by the Minister of Labour (f).

From the above it will be seen that if the local education authority decide to exercise their powers they are wholly responsible for the advisory work and for finding employment for young persons under the age of eighteen, and they cannot share the work with the Ministry of Labour as they did before April, 1924.

On the other hand, local education authorities are unable to undertake choicee of employment work unless they are prepared concurrently to administer unemployment benefit to persons between sixteen and eighteen.

Both these methods are in operation, the majority of county boroughs exercising their powers as the local education authority and the majority of counties leaving the matter in the hands of the Ministry of Labour.

**[423]**

Sect. 6 of the Unemployment Insurance Act, 1923 (g), has been extended by the Fifth Schedule to the Unemployment Act, 1934 (h), to permit a scheme to deal with (i.) the attendance at authorised courses of instruction of persons under eighteen years, or (ii.) the administration of increase of benefit claimed in respect of persons between fourteen and sixteen years who are dependent children as defined in sect. 9 of the Act of 1934 (i).

Sect. 13 of this Act (k) requires every local education authority for higher education (l) to submit to the Minister of Labour proposals for the provision of such courses of instruction as may be necessary for persons between the age at which they are exempt from school attendance and the age of eighteen years, and who are capable of and available for work, but have no work or part-time or intermittent work. If the Minister then certifies that insufficient provision has been made, it becomes the duty of the authority to provide such courses as are certified to be necessary.

*The School Conference.*—When a local education authority exercise powers of this kind, the first stage in this work is usually reached just before a child leaves school, that is, some time during his last term, when his mind is beginning to turn to finding work.

As a rule a school conference is held. At this all the agencies concerned with a child's future meet—the child, his parent, the head teacher, a children's care worker, the juvenile employment officer, and a member of the juvenile employment committee. All these combine to assist the coming young worker on his first step in post-school life, pointing out the facilities available to help him and

(e) 25 Geo. 5, c. 8.

(f) There has been a gradual change of emphasis in these functions; from being regarded mainly as educational functions they have come to be regarded as unemployment administration functions. See Education Act, 1921, s. 107 (7 Statutes 189); Unemployment Insurance Act, 1923, s. 6 (20 Statutes 703), both repealed by the Act of 1935 and Ministry of Labour ('Transfer of Powers) Order, 1927; S.R. & O., 1927, No. 677.

(g) 20 Statutes 703.

(h) 27 Statutes 812.

(i) *Ibid.*, 764.

(k) *Ibid.*, 768.

(l) See the definition of education authority in s. 31 of the Act; 27 Statutes 782.

making such suggestions as the advisability of continued education at evening classes. [424]

*Vocational Guidance.*—An important branch of this work is the gaining of the co-operation of employers in the area and this depends largely upon the personality of the juvenile employment officer.

The question of vocational guidance is now receiving considerable attention, and in bureaux which are being conducted on the latest lines the endeavour is not merely to find employment for young persons, but also to ascertain the particular type of employment for which each person is best fitted. There are many inherent difficulties in practice, but the confidence of employers of labour is naturally best gained by persons being sent to them who are from the point of view of qualifications, physique and temperament suited for the occupation in question.

Co-operation between the school medical officer and the juvenile employment officer has been found to be of special help, for where circumstances do not permit vocational guidance to be given with the completeness practised, for example, by the National Institute of Industrial Psychology, some approach to scientific guidance is possible where the school medical officer indicates the type of callings for which a youth is or is not suitable from the physical or even psychological standpoint. [425]

*Juvenile Employment Committees.*—Where this work is undertaken by a local education authority, it must be carried out in accordance with an approved scheme (*m*), and this must provide for the formation of a juvenile employment committee.

This committee must include (i) some members of the education committee; (ii) representatives of teachers; (iii) representatives of the employers and workers in the area of the authority; and (iv) others possessing special knowledge of social and educational questions relating to juveniles. [426]

*Co-operation with Employers.*—The successful operation of a scheme relating to the choice of employment depends, to a large extent, on a successful co-operation with employers in the area served by an employment bureau. This has a two-fold aspect. First the bureau desires to have information of all vacancies in the district and is therefore dependent upon local employers, and secondly the employers themselves naturally require applicants for vacancies on their staff to be of a suitable type. Both these requirements may be met by the juvenile employment officer keeping in close personal touch with staff managers, employers and others similarly concerned. [427]

*Payment of Unemployment Benefit.*—As stated (*ante*, p. 206), local education authorities who exercise their powers in regard to choice of employment must also administer unemployment benefit for young persons under the age of eighteen years. This benefit is paid in accordance with the Unemployment Insurance Acts, 1920 to 1934 (*n*), and the orders and decisions made thereunder. [428]

*Social After-Care.*—The sub-title that has been given to this type of after-care may not be the best that can be found, but it is used to signify that assistance which voluntary bodies endeavour to give to young persons apart from finding them suitable occupations or paying them unemployment benefit.

(*m*) See Board of Education Circular No. 1322 (revised February 13, 1924), Choice of Employment and Administration of Unemployment Benefit to Juveniles, and M. of L. C.E. Circular No. 9, dated 30th July, 1934.

(*n*) 20 Statutes 656 *et seq.*; 27 Statutes 756 *et seq.*

Much work of this nature is done through juvenile organisation committees, boys' and girls' clubs, scouts, guides and brigades. Countless other societies provide amusements and opportunities for passing leisure hours in comfort and happiness. Sports, clubs and camps are other activities of a physical nature which also assist in this work (o).

By visiting young people in their homes and at work, social workers are able to see at first hand those who live in a satisfactory environment and those to whom a guiding hand is necessary. In cases of distress, the provision of boots and clothes, milk, spectacles, etc., is often possible through voluntary funds at the disposal of the committee.

Where visits to homes are deemed to be inadvisable, juveniles are sometimes invited to meet members of the juvenile organisation committee and in a friendly way discuss their work and their problems.

The need of a good system of after-care is recognised by the Home Office as an important feature of the approved (formerly known as industrial or reformatory) school system, because conduct during the first two or three years after the boy or girl leaves school is the test of the success of the training (p). See also the title APPROVED SCHOOLS on p. 377 of Vol. I. [429]

#### HOLIDAY CAMPS, ETC.

The recognition that no system of education could be complete without full opportunity for outdoor exercise and physical culture has influenced modern legislation, for sect. 86 of the Education Act, 1921 (q), authorises either kind of local education authority to make arrangements to supply or maintain or aid the supply or maintenance of holiday or school camps, especially for young persons attending continuation schools.

Any such arrangements under sect. 86 must be approved by the Board of Education, for as a rule the question of expenditure arises. Some local education authorities provide in their estimates for the expenditure on camps of a definite sum, but the Board of Education should be informed of the authority's intention to make such provision, and an approval obtained.

When camps are organised in term time, it is usual for a detailed programme to be prepared by the head of the school. This programme should be submitted to the local education authority and the Board's inspector. These camps present opportunities for lessons in history, geography and nature study with special reference to objects of local interest. At some holiday camps, on the other hand, regular instruction is not given. [430]

#### PLAY CENTRES

The necessity of play centres arises almost exclusively in populous areas. In large towns, where open spaces are few, many children spend their spare time mainly in the streets. With a view to providing a more fitting place for children's games, play centres were organised. These ensured that during holidays and sometimes during the evenings many children could play and be taught to play games under the

(o) See Board of Education Educational Pamphlets, No. 98, "The Work of Juvenile Organisation Committees."

(p) See Classified List of Schools approved by the Secretary of State, 1933. Preface at p. 10.

(q) 7 Statutes 177.

sympathetic guidance of voluntary workers, and given some of the delights of a well-equipped play room (*r*). School playgrounds, halls and classrooms are generally used for the purpose.

Sect. 86 of the Act (*s*) allows local education authorities to provide facilities for social and physical training in the day or evening, subject to the approval of the Board of Education.

According to the regulations of the Board of Education (*t*) a play centre must provide (after school hours and, if thought fit, on Saturdays and during the holidays) for the recreation and physical welfare under adequate supervision of children attending public elementary schools.

The centre must be open for not less than one-and-a-half hours on three evenings a week and sixty times in the evenings or on Saturdays during the year, unless the Board of Education in special circumstances sanction other arrangements.

These play centres must be recognised by the local education authority, and unless the circumstances are exceptional they must be aided by the local education authority, either by placing premises at the disposal of those organising the centre free of charge for rent, heating, lighting and cleaning, or in some other manner. [431]

### SPORTS, GAMES AND PLAYING FIELDS

The provision of playing fields has now come to be bound up closely with the provision of school buildings, but for many years a school building, and a tar-paved area at the rear or surrounding it, was considered to be all that was necessary for a public elementary school. This has happily changed, and the Board of Education now expect a local education authority to consider playing field requirements when sites for new schools are being acquired.

The Board have stated (*u*) that it is most desirable that no senior school, however moderate in size, should have less than two to three acres of land attached to it. For a senior school of 300 or more pupils not less than four to five acres are desirable or six to seven where the number of pupils approaches 500. Owing to the need of separate provision for the two sexes, a somewhat larger space is required for a mixed school than for a boys' or girls' school.

The range of games has considerably widened of late years, and now some or most of the following are usually included :

*Boys* (Winter) : football (Rugby and Association), touch or touch and pass, hand-ball, skittles or post-ball, hockey. (Summer) : cricket, rounders, stool-ball, volley-ball, tennis.

*Girls* (Winter) : hockey, shinty, netball, rugby touch or touch and pass, hand-ball, skittle or post-ball. (Summer) : tennis, cricket, rounders, stool-ball, post-ball.

Athletic sports are now usually included in the physical activities of schools with children over the age of eleven.

If a local education authority appoint an organiser of physical training, his name must be submitted to the Board of Education for

(*r*) See "Evening Play Centres for Children" (Methuen & Co.).

(*s*) 7 Statutes 177.

(*t*) S.R. & O., 1925, No. 835, Art. 38.

(*u*) Board of Education Educational Pamphlets No. 80, "School Playing Fields," para. 28.

approval before appointment, as must also any arrangements made by an authority for utilising the services of such an organiser. The Board will, however, recognise for grant the salary and travelling expenses of an organiser of physical training whose appointment they have approved (a). See also titles GAMES, PROVISION FOR and OPEN SPACES. [432]

#### OPEN-AIR SCHOOLS (See also title OPEN AIR SCHOOLS)

A number of local education authorities have provided open-air schools with a view to making available a school environment which gives a maximum of fresh air and sunlight and at the same time ample opportunities for exercise, rest and proper feeding and medical supervision.

There is usually in such schools a modified curriculum allowing longer periods to be spent on manual work and generally adapting it to the requirements of debilitated children in a way that is not likely to cause fatigue.

An open-air school is usually so constructed as to allow a full and free entry of fresh air and sunlight. One side of the classroom may be entirely absent, or two or three sides may consist of windows or movable partitions. As a rule, the walls are so designed that, although the building is a shelter from wind and rain, it is not obstructive to air.

The open-air principle comprises (i.) living as much as possible in the open air, (ii.) sufficient and suitable school meals, (iii.) organised physical exercises in the open air, (iv.) midday rest in horizontal position, (v.) shower baths, (vi.) practical subjects, manual work and nature study, and (vii.) careful daily medical and nursing supervision (b). [433]

#### NURSERY SCHOOLS AND CLASSES (bb)

**Power to Provide.**—Local education authorities were first authorised to supply or aid the supply of nursery schools by sect. 19 of the Education Act, 1918, and this provision was re-enacted in sect. 21 of the Act of 1921 (c). This empowers a local education authority for elementary education to supply or aid the supply of nursery schools or classes for children over two and under five years of age, or any later age to which the Board of Education may agree. The authority may also attend to the health, nourishment and physical welfare of children who attend these schools or classes.

Under sect. 119 of the Act (d), the Board of Education may pay grants in aid of nursery schools or classes, provided they are open to inspection by the local education authority, and provided the authority may appoint representatives on the body of managers to the extent

(a) S.R. & O., 1925, No. 835, Art. 37.

(b) See Board of Education Handbook of Suggestions on Health Education, 1933, at p. 24—"Principles of the Open-air School."

(bb) See also title DAY NURSERIES.

(c) 7 Statutes 140.

(d) *Ibid.*, 194.

of at least one-third of the total number of managers. The Board of Education must consult the local education authority before recognising any nursery school. [434]

**Need of such Schools and Classes.**—Although the primary need of a nursery school should arise from the desirability of improving the health, physical and mental development of children between the ages of two and five (e), no obligation is placed on parents to send their children to these schools. Neither do they rank as public elementary schools within the meaning of the Education Acts.

Infant and nursery schools have recently been the subject of a report by the Consultative Committee of the Board of Education (f). There was general agreement among the witnesses before that committee that the two principal reasons for the establishment of nursery schools were (1) that they ensured the adequate medical supervision of children before admission to the public elementary school, and (2) that they provided satisfactory conditions for "nurture" and education for little children between the ages of two and five. [435]

**Objects of such Schools and Classes.**—The objects of the nursery school cannot be better set out than by Miss Grace Owen in her pamphlet entitled "Education and Nursery Schools, 1930." She gives the objects as : (i.) To provide healthy external conditions for the children—light, sunshine, space and fresh air. (ii.) To organise a healthy, happy, regular life for the children, as well as continuous medical supervision. (iii.) To assist each child to form for himself wholesome personal habits. (iv.) To give opportunity for the exercise of the imagination and the development of many interests, as well as skill of various kinds. (v.) To give experience of community life on a small scale, where children of similar as well as varying ages work and play with one another day-by-day. (vi.) To achieve a real unity with the home-life. [436]

**Premises and Organisation.**—The Consultative Committee held that the provision of open shelters, with a liberal space for a garden-play-ground, was an essential feature in the design of all nursery schools. With reference to the size of nursery schools, the Committee found that small schools were more expensive to provide and maintain, and, though on purely educational grounds they were disposed to regard a nursery school for sixty to eighty children as an ideal size, they recommended on economic grounds that, whenever necessary, nursery schools should be planned to accommodate 160 to 180 children, provided that the children were grouped in units not exceeding 35—40.

Although it seems desirable that the nursery school should develop separately from the infant school, it might be advantageous if the valuable ideas embodied in the nursery school could be realised within the existing infant school system which, it has sometimes been admitted, has suffered from bookish and academic traditions. [437]

**Difference between Nursery Schools and Nursery Classes.**—Both sect. 21 of the Education Act, 1921 (g), and the Report of the Consultative Committee refer to nursery schools and nursery classes. It may therefore be advisable to point out the difference between these. The

(e) See s. 21 (a) of the Act ; 7 Statutes 140.

(f) Board of Education Report of the Consultative Committee on Infant and Nursery Schools, 1933.

(g) 7 Statutes 140.

Report of the Consultative Committee gives the principal differences as : (i.) nursery schools may admit children at the age of two, whereas in nursery classes, the age of admission is usually three ; (ii.) a nursery school is usually a separate educational unit under its own superintendent, whereas a nursery class forms an integral part of an infant school ; (iii.) the provision of mid-day dinner is almost universal in the existing nursery schools, whereas in nursery classes it is the practice as a rule to provide milk with a rusk or biscuit during the morning ; (iv.) the nursery school as a rule remains open for longer hours than the nursery class ; (v.) medical inspection and treatment of the children is carried out more frequently in the nursery school than in the nursery class ; (vi.) children passing from a separate nursery school into the infant department of a public elementary school experience a break in treatment and methods of teaching—this can be reduced if they pass direct from a nursery class into the lowest class of the infant department within the same school building ; (vii.) the cost of the provision and maintenance of a nursery school has up to the present been higher than the cost of providing and maintaining a nursery class. There is, moreover, the important administrative difference that the nursery school is not, from the legal point of view, a public elementary school and is subject to a separate set of official regulations (h). [438]

**Conclusions.**—Where home conditions were good the Consultative Committee believed that the best place for a child below the age of five was at home with his mother, but that during those decisive years some expert and regular medical advice appeared to be essential. They recognised, however, that the home surroundings of a large number of children were not satisfactory, and thought that children below the age of five from such homes might with great benefit to themselves, their parents and the State, attend either separate nursery schools, or nursery classes in public elementary schools.

As a general recommendation, the committee suggested that each local education authority should survey the needs of their area with regard to home conditions and the wishes of the parents, and, after consultation with the Board of Education, should take such steps as seemed to them desirable to provide in schools nurture and training for children below the age of five. [439]

#### LONDON.

The situation as to special services does not in London generally differ from that in the provinces, but the following points may be noted.

Schools transferred to the L.C.C. under the L.G.A., 1929, are now dealt with as follows : (a) the residential schools and children's homes for public assistance children, although under the direction of the Education Committee, are conducted under the Poor Law Act, 1930 ; (b) all defective children maintained in certified residential schools are now dealt with under Part V. of the Education Act, 1921 (i) ; (c) ten schools conducted in hospitals (formerly maintained under the Poor Law) have been certified under Part V. of the Education Act as special schools. [440]

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(h) Board of Education (Special Services) Regulations, 1925, Part VIII. ; S.R. & O., 1925, No. 835.

(i) 7 Statutes 159.

*Training Ships.*—Sect. 135 of the Poor Law Act, 1930 (*k*), provides that the L.C.C. may, with the consent of the Minister, purchase, hire or otherwise acquire and fit up and furnish one or more ships to be used for the training of boys for sea service. This function is exercised by the Education Committee. [441]

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(*k*) 12 Statutes 1035.

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## EGGS

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*See also titles : FOOD AND DRUGS ;  
FOOD AND DRUGS AUTHORITIES.*

For marking of imported eggs, see also title IMPORTED FOOD.  
For unsound eggs, see title UNSOUND FOOD.

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**Introductory.**—Eggs which have been imported, preserved, cold-stored or chemically stored are subject to a variety of marking requirements, the general effect of which is that the only eggs which may lawfully be offered for sale unmarked in the home market are eggs produced in Great Britain or Northern Ireland which have not been preserved, cold-stored or chemically stored. [442]

**Marking of Imported Eggs.**—All imported eggs must be individually marked with an indication of their origin (*a*), and Food and Drugs Authorities (*b*) are empowered, though not obliged, to enforce the law in that respect (*c*). The indication of origin, which must be conspicuously and durably marked in ink, in letters not less than 2 millimetres in height, on every imported egg sold or exposed for sale in the United Kingdom, must be the name of the country from which the

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(*a*) Merchandise Marks (Imported Goods) No. 5 Order, 1928, S.R. & O., 1928, No. 1052, made under Merchandise Marks Act, 1926 ; 19 Statutes 898.

(*b*) For these authorities, see s. 13 of Food and Drugs (Adulteration) Act, 1928 ; 8 Statutes 893, and title FOOD AND DRUGS AUTHORITIES.

(*c*) Merchandise Marks Act, 1926, s. 9 ; 19 Statutes 904. See also title IMPORTED FOOD.

eggs come, or the word "Foreign" or "Empire" as the case may require. It is an offence to remove or obliterate the mark of origin (d). [443]

**Agricultural Produce (Grading and Marking) Acts, 1928 and 1931 (e).**  
**Local Authorities.**—The local authorities for the purposes of these Acts are the councils of counties, county boroughs and metropolitan boroughs and the Common Council of the City of London (f). It is the duty of these local authorities to enforce the provisions of the Acts and to appoint the necessary officers, but regard should be paid to the advice of the M. of A. & F. (quoted *post* under "Grade Designations") as to the extent to which enforcement should be carried out.

**Preserved, Cold-Stored and Chemically-Stored Eggs.**—The marking of preserved, cold-stored and chemically stored eggs is regulated by the Agricultural Produce (Grading and Marking) Acts of 1928 (e) and 1931 (e), and regulations of the M. of A. & F. made thereunder (g). Sect. 3 of the Act of 1928 requires preserved eggs to be marked in the prescribed manner. The Minister has exempted from the operation of that section eggs which have been kept in cold storage or chemical storage (h). But, as "chemical storage" is defined by sect. 7 of the Act of 1928 (i) to mean storage for preservation by processes which do not alter the composition of egg-shells, preservation in lime-water, water-glass or oil (substances which alter the composition of egg-shells) is not chemical storage, and the exemption from the provisions of sect. 3 is limited to cold storage and preservation in such a medium as gas. Eggs requiring to be marked "preserved" must have that word stamped on them in letters of at least  $\frac{1}{16}$ -inch enclosed in a circle of not less than  $\frac{1}{2}$ -inch diameter. [444]

With regard to eggs which have been kept in cold storage or preserved in gas, the position seems to be that in consequence of the order of the Minister exempting such eggs from the marking requirements of sect. 3 of the Act of 1928 it is not an offence under that section to sell or expose such eggs unmarked; but since by sect. 4 (2) (b) it is provided that cold-stored and chemically-stored eggs must be marked in the prescribed manner before they are sent out from registered premises, and under the same sub-section it is an offence to obliterate or remove marks, British cold-stored eggs must be marked "chilled" or "cold-stored" as required by the regulations of 1930 (k). [445]

**Registration of Premises.**—Premises used by way of trade for the cold or chemical storage of eggs must be registered with the local authority (l); but as storage in lime-water, water-glass, or oil is not chemical storage, the number of registrations is not likely to be large. All registrations are to be notified by the local authorities to the Ministry of Agriculture (m).

(d) *Ibid.*, s. 8; 19 Statutes 904.

(e) 1 Statutes 165 and 24 Statutes 8.

(f) Act of 1928, s. 5; 1 Statutes 168.

(g) Agricultural Produce (Grading and Marking) (Eggs) Regulations, 1930; S.R. & O., 1930, No. 132.

(h) By an order dated October 16, 1928.

(i) 1 Statutes 169.

(k) S.R. & O., 1930, No. 132.

(l) Act of 1928, s. 4; 1 Statutes 167.

(m) S.R. & O., 1930, No. 132, Art. 6.

An officer of a local authority is given the usual powers of entry and inspection of premises in which he has reason to believe that eggs are kept in cold or chemical storage and may search for and inspect eggs in the premises. The officer may also require any person in or about the premises to give such information as may be reasonably demanded of him as to any name and address required to enable the officer to carry out his duties under the Act (*n*). The obstruction of the officer or wilful withholding of information is an offence. [446]

*Grade Designations.*—Under sect. 2 of the Act of 1928 (*o*), the M. of A. & F. has made regulations (*p*) as to the application of grade designations (defined in sect. 1 of the Act as a designation "appropriate to indicate the quality of any articles of agricultural produce") to hen's eggs, but in a circular issued to local authorities on March 31, 1931, the Minister indicated that officers of local authorities are not expected to undertake any duties in connection with questions arising under sects. 1, 2 (1) and (2) of the Act. It does, however, come within the province of local authorities to deal with offences under sect. 2 (3) dealing with forgery or copying with small variations a grade designation mark. [447]

Local authorities have been asked to refer to the Minister any suspected offences under sect. 2 (2) of the Merchandise Marks Act, 1887 (*q*), in connection with questions of the size or weight of eggs sold under a grade designation, or any instances of misleading marks within the scope of sect. 4 of the Agricultural Produce (Grading and Marking) Amendment Act, 1931 (*r*).

The statutory grade designations are in use in the National Mark scheme and when eggs are sold with the designations "special," "standard," "medium" or "pullet," it is a term of the contract that each egg will be at least of the undermentioned weights, viz.  $2\frac{1}{4}$  ozs. for "special," 2 ozs. for "standard,"  $1\frac{3}{4}$  oz. for "medium" and  $1\frac{1}{2}$  oz. for "pullet" eggs (*s*). [448]

**Sale by Weight.**—No statute requires that eggs must be sold by weight, but any contract for the sale of eggs in shell is void unless it provides for the sale of eggs by weight or under a prescribed grade designation (*t*). This does not, however, apply to contracts for the sale of fewer than twenty-five eggs or to contracts relating to eggs produced outside Great Britain or requiring delivery to be made outside Great Britain. Each contract of sale by weight must state the weight of the eggs sold. Also it is a term of the contract that no egg in any lot so sold has been preserved by any process ; that the shell of every

(*n*) Act of 1928, s. 4 (2) (c) ; 1 Statutes 167.

(*o*) 1 Statutes 166.

(*p*) S.R. & O., 1930, No. 132.

(*q*) 19 Statutes 833. S. 2 (2) of the Act of 1887 makes it an offence (with certain qualifications) to sell, expose for, or have in possession for, sale or any purpose of trade or manufacture any goods to which a false trade description is applied. The definition of trade description in s. 3 (1) of the same Act would include a grade designation.

(*r*) 24 Statutes 9.

(*s*) Agricultural Produce (Grading and Marking) (Eggs) Regulations, 1930 ; S.R. & O., 1930, No. 132.

(*t*) Agricultural Marketing Act, 1933, s. 20 ; 26 Statutes 22. For offences arising from the sale of eggs of a less weight or number than represented, see title WEIGHTS AND MEASURES.

egg is clean and sound ; that the yolk is translucent and firm, and that the air space does not exceed a quarter of an inch in depth (*u*).

If eggs are sold under any of the grade designations, it is a term of the contract that they accord with the statutory definition, and if they do not accord with the definition the buyer has a right to regard this as a breach of contract (*u*). [449]

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(*u*) Act of 1928, s. 1 (2) (1 Statutes 165) and Schedules to Agricultural Produce (Grading and Marking) (Eggs) Regulations, 1930 (1930, S.R. & O., No. 132).

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## ELECTION ADDRESS

*See ELECTION AGENTS, LOCAL GOVERNMENT.*

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## ELECTION AGENTS, LOCAL GOVERNMENT

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*See also titles :*

BALLOT ; CORRUPT AND ILLEGAL PRACTICES ; ELECTION PETITION ; ELECTIONS ;	LOCAL GOVERNMENT ELECTORS ; REGISTRATION OF ELECTORS ; RETURNING OFFICER.
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**Introduction.**—Three distinct classes of agents may be employed in connection with local government elections, viz. (i.) election agents ; (ii.) polling agents ; and (iii.) counting agents.

As explained in the title ELECTIONS, the provisions governing the election of county councillors and borough councillors are for the most part contained in sects. 8—16, 28—30, 61—74, 79—83 and the Second Schedule to the L.G.A., 1933 (*a*), and many of these enactments extend to both kinds of election. The provisions governing the election of district and parish councillors will be found in sects. 35—41, 51—55, 61—74, 79—83, and the Second Schedule (*b*), but by sects. 40, 54 of the Act (*c*) these elections are to be conducted in accordance with election rules made by the Home Secretary, which may adapt, alter or except from application, the provisions in the Second Schedule to the Act. [450]

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(*a*) 26 Statutes 310, 316, 337, 349, 474.  
 (*b*) *Ibid.*, 321, 331, 337, 349, 474.  
 (*c*) *Ibid.*, 325, 332.

The new election rules comprise the Urban District Councillors Election Rules, 1934 (*d*), the Rural District Councillors Election Rules, 1934 (*e*), and the Parish Councillors Election Rules, 1934 (*f*). By the Rural District Councillors and Parish Councillors Election Rules a new paragraph is added to para. 31 of Part III. of the Second Schedule to the Act, for the purpose of covering instances in which the polls for both elections have been taken together, and to authorise the returning officer to separate the two sets of ballot papers, before he proceeds with the count of the votes. A few alterations of the provisions summarised in this title in their application to elections of district and parish councillors are indicated later, but in other respects these provisions may be regarded as extending to elections of district and parish councillors as well as of county and borough councillors. [451]

**Election Agents.**—The employment of a paid election agent in connection with a local election seems to be forbidden by sect. 13 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*g*). This Act as enacted applies to municipal elections, and is extended to county council elections by sect. 75 of the L.G.A., 1888 (*h*), and to elections of district councillors and parish councillors by sects. 40 (2), 54 (2) of the L.G.A., 1933 (*i*), subject to the adaptations, etc., made by the Election Rules of the Home Secretary. While the provisions referred to in sect. 37 of the Act of 1884 are expressly excluded by the Act of 1933 from application to elections of district councillors and parish councillors, sect. 13 of the Act of 1884 does not seem to be one of the provisions referred to in sect. 37 of that Act, and therefore excluded from application (*k*).

While a paid election agent cannot be employed, there is nothing to prevent a candidate from availing himself of the gratuitous services of an adviser, who would, however, have no official status at the election. It is common to find candidates supported officially by a party or an organisation, when the local agent or agents generally act on behalf of a number of candidates. They must not receive any reward or payment for such service. The only agents who may be paid are polling agents and counting agents. [452]

**Polling Agents.**—Each candidate may appoint agents (called “Polling Agents”) to attend at the polling stations for the purpose of detecting personation. Notice of any appointment must be given to the returning officer two clear days at least before the opening of the poll (*l*).

The accommodation at a polling station is often limited in country towns and sect. 13 of Part III. of the Second Schedule to the Election Rules relating to urban district councillors, rural district councillors and parish councillors imposes a limit on the number of polling agents. Not more than one such agent may attend any polling station on behalf of the same candidate, and not more than three such agents may attend a polling station, unless the number of candidates exceeds twenty, in which event four polling agents may attend. This last enlargement of the number is not included, however, in the Rural District Councillors Election Rules, or in the Parish Councillors Election Rules.

(*d*) S.R. & O., 1934, No. 545.

(*e*) *Ibid.*, 1934, No. 546.

(*f*) S.R. & O., 1934, No. 1310.

(*g*) 7 Statutes 516.

(*h*) 10 Statutes 746.

(*i*) 26 Statutes 325, 332.

(*k*) See also Vol. IV., pp. 93, 94.

(*l*) L.G.A., 1933, Sched. II., Part III., para. 13; 26 Statutes 482.

If the admissible number is exceeded, the returning officer decides which of them may attend, but giving preference to those agents appointed by the larger number of candidates. [453]

A polling agent may require a presiding officer to put to any person applying for a ballot paper the question or questions set out in para. 16 (1) of Part III. of the Second Schedule to L.G.A., 1933 (m).

If at the time a person applies for a ballot paper, or after he has applied and before he has left the polling station, a polling agent declares to the presiding officer that he has reasonable cause to believe that the applicant has committed an offence of personation and undertakes to substantiate the charge, the presiding officer may order a police officer to arrest the applicant (n).

At the close of the poll, the ballot box, unused and spoilt ballot papers, etc., are to be sealed by the presiding officer in the presence of the polling agents, and also sealed with the seals of such of the polling agents as desire to affix their seals (o). [454]

**Counting Agents.**—Each candidate may appoint an agent or agents to be in attendance at the counting of the votes (p). The number to be appointed should be agreed upon with the returning officer.

Here again para. 28 of Part III. of the Second Schedule to the Urban District Councillors, Rural District Councillors and Parish Councillors Election Rules departs from the text of the Act of 1933. In order to limit the number of persons attending the count, para. 28 provides that each candidate may appoint an agent (q) to attend at the counting of the votes.

Written notice of every appointment stating the name and address of the person appointed must be given to the returning officer two clear days before the opening of the poll, and the returning officer has power to refuse to admit to the place where the votes are counted any counting agent whose name and address has not been so given. Any notice required to be given to a counting agent by the returning officer may be delivered at or sent by post to the address stated in the notice. [455]

The counting agents are to be notified by the returning officer of the time and place at which he will begin to count the votes (r).

A duly appointed counting agent has a statutory right to be present at the counting of the votes (s).

Before the votes are counted, each ballot box must be opened in the presence of the counting agents, and the ballot papers counted and a record of the number made (t).

After the completion of the counting, the returning officer is to proceed, in the presence of the counting agents, to verify the ballot paper account given by each presiding officer, by comparing it with the number of ballot papers recorded. The returning officer must draw up a statement of verification and, on request, allow any counting agent to copy the statement (u).

(m) 26 Statutes 482. (n) L.G.A., 1933, Sched. II., Part III., para. 17.

(o) *Ibid.*, para. 26; 26 Statutes 485. (p) *Ibid.*, para. 28.

(q) Not "agents" as in para. 28 as printed in the Act.

(r) L.G.A., 1933, Sched. II., Part III., para. 29.

(s) *Ibid.*, para. 30.

(t) *Ibid.*, para. 31.

(u) *Ibid.*, para. 39.

No returning officer or officer appointed under the Second Schedule to the Act of 1933, or the partner or clerk of any such officer, may act as a polling or counting agent (a). [456]

**Death of Agent.**—If a polling or a counting agent dies or becomes incapable of acting, the candidate may appoint another person in his place, giving notice forthwith to the returning officer of the name and address of the agent so appointed (b). [457]

**Non-Attendance of Agents.**—Where any act or thing is to be done in the presence of agents of the candidates, the non-attendance of any agent or agents does not, if the act or thing is otherwise duly done, invalidate the act or thing done (c). [458]

**Declaration of Secrecy.**—Every polling agent or counting agent must before the opening of the poll, or if appointed after its opening, before acting as such agent, make a declaration of secrecy, either before a J.P. or the returning officer in the form set out in Part IV. of the Second Schedule to the L.G.A., 1933 (d). [459]

**Corruption in Office.**—As to the liability of agents in respect of corrupt transactions, see the title CORRUPTION IN OFFICE. [460]

**London.**—The provisions of the L.G.A., 1933, relating to elections do not extend to London, and elections of county councillors and metropolitan borough councillors remain subject to distinct provisions as to polling agents and counting agents.

In an election of county councillors, the polling agents are appointed under sect. 85 of the Parliamentary Voters' Registration Act, 1843 (e), as applied first to municipal elections by sect. 24 and the Third Schedule to the Ballot Act, 1872 (f), and thence to county council elections by sects. 2, 75 of the L.G.A., 1888 (g). Counting agents are, however, appointed under para. 31 of the First Schedule to the Act of 1872 (h), also as applied by the L.G.A., 1888. The appointment of a new agent, on the death or inability of a polling or counting agent is authorised by para. 53 of the same schedule (i).

On the other hand, the appointment of polling agents and counting agents at an election of metropolitan borough councillors is governed by the Metropolitan Borough Councillors Election Rules, 1931 (k). Rule 16 allows each candidate to appoint a polling agent for each polling station if the number of candidates for any ward in the borough does not exceed three. If the number of candidates exceeds three but does not exceed twenty, three polling agents for each station may be appointed. If the number of candidates exceeds twenty, one additional agent may be appointed for each excess of twenty candidates over the number of twenty, but if the number of candidates exceeds sixty, only six agents in all may be appointed for each polling station. [461]

It should be noticed that the agents are to be appointed for each

(a) L.G.A., 1933, Sched. II., Part III., para. 48; 26 Statutes 490.

(b) *Ibid.*, paras. 13, 28.

(c) *Ibid.*, para. 52.

(d) *Ibid.*, para. 54; 26 Statutes 491.

(e) 7 Statutes 386.

(f) *Ibid.*, 484, 452.

(g) 10 Statutes 686, 746.

(h) 7 Statutes 442.

(i) *Ibid.*, 447.

(k) S.R. & O., 1931, No. 22. Amended by S.R. & O., 1933, No. 1127, 1934, No. 963, but not so as to affect the rules of 1931 as to agents.

polling station, not each polling place. Rule 12 permits a polling place to comprise more than one polling station.

Para. 31 of the First Schedule to the Ballot Act, 1872 (*l*), as to counting agents is completely altered by the Rules (*m*), and in its new form applies rule 16, as to polling agents, to the appointment of counting agents to attend the counting of the votes for a ward, but fixes the admissible number at thrice the number of polling agents which may be appointed for one polling station under rule 16. [462]

(*l*) 7 Statutes 442.

(*m*) See p. 24 of the Rules.

## ELECTION OFFENCES

*See CORRUPT AND ILLEGAL PRACTICES; ELECTIONS.*

## ELECTION PETITION

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*See also titles:*

CASUAL VACANCY; | ELECTIONS;  
CORRUPT AND ILLEGAL PRACTICES; | MAYOR.

FOR THE GENERAL LAW RELATING TO ELECTIONS, *See HALSBURY'S LAWS OF ENGLAND* (2ND ED.), VOL. 12, TITLE "ELECTIONS."

**Introductory.**—The procedure for questioning elections for local government areas will be found in Part IV. of the Municipal Corporations Act, 1882 (*a*), as amended by the Municipal Elections (Corrupt and Illegal Practices) Acts, 1884 (*b*) and 1911 (*c*), and in the rules made thereunder (*d*). For brevity, the Act secondly mentioned is referred to in this article as the Act of 1884.

Originally applicable only to municipal elections, viz. to elections in boroughs to the office of mayor, alderman, councillor or elective

(*a*) Ss. 87—104; 10 Statutes 599—607.

(*b*) 7 Statutes 511.

(*c*) *Ibid.*, 546.

(*d*) Rules were to be made by the judges of the High Court for the time being on the rota for the trial of Parliamentary election petitions (Municipal Corporations Act, 1882, s. 100; 10 Statutes 606); but the Rule Committee of the Supreme Court were substituted by s. 30 (b) of the Act of 1884 (7 Statutes 527). The present rules are the Municipal Election Petition Rules, 1883 (S.R. & O., Revised, 1904, Vol. XII., 656—69), and throughout this article a reference to rules means these rules unless otherwise stated.

auditor (*e*), Part IV. of the Act of 1882, as amended by the Act of 1884, is applied to the election of county councillors, county aldermen and the chairman of a county council by sect. 75 of the L.G.A., 1888 (*f*). As the amending Act of 1911 is by sect. 2 to be construed as one with the Act of 1884, the amending Act no doubt applies to any election to which the Act of 1884 had been applied. [463]

Part IV. of the Act of 1882, and the Acts of 1884 and 1911 are also applied to elections of district councillors and parish councillors (but not to the election of a chairman) by sects. 40 (2), 54 (2) of the L.G.A., 1933 (*g*), subject to such adaptations, alterations and exceptions as may be made by the district or parish election rules of the Home Secretary (*h*). [464]

**Power to Question Election by Petition.**—A municipal election (*i*) may be questioned by an election petition (*k*). Unless it is so questioned within the period fixed by law (*l*), it is to be deemed to have been to all intents a good and valid election (*m*). The grounds on which a petition may be presented are (*n*): (1) that the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation (*o*) ; or (2) that the election was avoided by corrupt practices or offences against the Municipal Corporations Act, 1882, Part IV., committed at the election (*p*) ; or (3) that the person whose election is questioned was at the time of the election disqualified (*q*) ; or (4) that he was not duly elected by a majority of lawful votes ; or (5) that illegal practices or offences of illegal payment, employment or hiring, committed in reference to the election for the purpose of promoting the election of a candidate, prevailed so extensively that they may reasonably be taken to have affected the result of the election. An election held under L.G.A., 1933, or under any enactment repealed by it, is not to be liable to be questioned by reason of a defect in the title, or want of title, of the person presiding at or conducting the election, if such person *de facto* acted in such capacity (*r*). [465]

(e) See the definitions of "municipal election" and "corporate office" in s. 7 of the Act of 1882; 10 Statutes 577.

(f) 10 Statutes 746.

(g) 26 Statutes 325, 332.

(h) The present rules are Urban District Councillors Election Rules, 1934 (S.R. & O., 1934, No. 545); Rural District Councillors Election Rules, 1934 (S.R. & O., 1934, No. 546); and Parish Councillors Election Rules, 1934, S.R. & O., 1934, No. 1318. For necessary adaptations, etc., see *post*, pp. 234, 235.

(i) For meaning of this term, see *ante*, and for consequent adaptations in areas other than boroughs, see *post*, pp. 233—235.

(k) This is the only method by which the election to a corporate office can be questioned (Municipal Corps. Act, 1882, s. 87 (2); 10 Statutes 599). See also *Pritchard v. Bangor Corp.* (1888), 13 App. Cas. 241; 20 Digest 123, 999; *R. v. Morton*, [1892] 1 Q. B. 39; 20 Digest 138, 1129.

(l) For periods, see *post*, p. 222.

(m) L.G.A., 1933, s. 71 (1); 26 Statutes 344.

(n) Grounds (1)—(4) are taken from Municipal Corps. Act, 1882, s. 87 (1); (10 Statutes 599); ground (5) from s. 18 of the Act of 1884 (7 Statutes 517).

(o) See title ELECTIONS.

(p) See title CORRUPT AND ILLEGAL PRACTICES.

(q) For disqualifications, see title ELECTIONS, and L.G.A., 1933, s. 59; 26 Statutes 334. Disqualifications arising subsequently to the election are not questionable by election petition, but by proceedings under L.G.A., 1933, s. 84; 26 Statutes 350. But see pp. 169, 170 of Vol. II. as to whether in some exceptional cases proceedings under s. 84 are not available where a disqualification at the date of election continues to exist after the election, e.g. the continued holding of an office of profit.

(r) L.G.A., 1933, s. 71 (2); 26 Statutes 344.

**Presentation of Petition and Appointment of Agent.**—The petition may be presented either by a candidate or by four or more voters (*s*) against any person elected, and a returning officer of whose conduct complaint is made may be a respondent (*t*). A candidate, who has been nominated for election as a borough councillor though disqualified, may present an election petition (*u*). But a person for whom votes have been given at an election of aldermen cannot present a petition, unless he has been elected, or has declared himself a candidate for election (*a*).

A petition must be in the prescribed form (*b*), divided into paragraphs, stating the right of the petitioner to petition and the facts as to the holding and result of the election, with the facts and grounds relied on to sustain the prayer with which it must conclude (*c*). Evidence need not be stated, though particulars may be ordered by the High Court or a judge to prevent surprise and unnecessary expense and ensure a fair trial (*d*). [466]

Under rule 1, an election petition is to be presented by leaving it, with a copy, at the office of a Master of the King's Bench Division nominated as prescribed officer under the Parliamentary Elections Act, 1868 (*e*), and the Master is to give a receipt (*f*), and to forward the copy to the town clerk of the borough who is forthwith to publish it throughout the borough (*g*). The presentation must be within twenty-one days after the day of election, except (*l*) that where the ground of presentation is corrupt practices and specifically alleges a payment or reward made or promised since the election by, or on account or with the privity of, the elected candidate in furtherance of such practices, presentation may be within twenty-eight days after the date of the payment or promise (*h*); and (*2*) that where the ground is illegal practices, the presentation may be within fourteen days after the receipt by the town clerk of the return and declaration of the election expenses of the candidate petitioned against, or of an authorised excuse for failure to make them; if the illegal practice alleged is the payment of money or other act done since the election by, or with the privity of, the candidate in pursuance of such illegal practice, and this is specifically alleged, the time for presentation is twenty-eight days after the date of such payment or act (*i*). If an election petition is presented in due time under the Municipal Corporations Act, 1882, and it is later desired to add an allegation of illegal practices, the petition may with the leave of the High Court be amended within the time within which a petition on the ground of such illegal practice might have been presented (*k*), and the section applies notwithstanding that the illegal practice is also a corrupt practice. If either a corrupt practice or an

(*s*) Municipal Corporns. Act, 1882, s. 88 (1); 10 Statutes 600.

(*t*) *Ibid.*, s. 88 (2); 10 Statutes 600.

(*u*) *Harford v. Linskey*, [1899] 1 Q. B. 852; 20 Digest 183, 1593.

(*a*) *Cambridge County Council Case, Fordham v. Webber*, [1925] 2 K. B. 740; Digest (Supp.); relating to an election of county aldermen.

(*b*) Municipal Corporns. Act, 1882, s. 88 (3); 10 Statutes 600. For form of petition, see rule 5 of Rules of 1883.

(*c*) Rules 2—4.

(*d*) Rule 6.

(*e*) 7 Statutes 408.

(*f*) The form of receipt is prescribed in rule 1.

(*g*) Municipal Corporns. Act, 1882, s. 88 (3); 10 Statutes 600.

(*h*) *Ibid.*, s. 88 (4); *ibid.*

(*i*) Act of 1884, s. 25; 7 Statutes 522.

(*k*) *Ibid.*, s. 25 (3); 7 Statutes 522.

illegal practice such as that described in sect. 25 (2) of the Act of 1884 is alleged, the petition can be presented whether or not any petition against the same candidate has previously been presented or tried (*l*). [467]

With the petition, the petitioner is to leave at the Master's office a written and signed notice either giving the name of a solicitor whom he has authorised to act as his agent, or stating that he will act for himself, and in either case giving an address within three miles from the General Post Office in London at which notices can be served : if no such address is given, all notices and proceedings may be given and served by being stuck up at the Master's office (*m*). Any person elected to a municipal office may at any time after election give to the Master a written and signed notice either of his having appointed a named solicitor to act as his agent, in case there should be a petition against him, or of his intention to act for himself, and giving an address as before, and if no such address is given within a week after service of a petition, notices and proceedings may be given and served by sticking up the same in the Master's office (*n*). The Master is to keep at his office a book, open to inspection during office hours by any person, in which all addresses and names of agents are duly entered up. He is to send the names and addresses of the petitioner's and respondent's agents (if any) to the town clerk along with the copy petition, and they are to be published (*o*).

[468]

If in the petition the petitioner claims the office for an unsuccessful candidate, alleging that he had the majority of lawful votes, the party complaining of or defending the election is to deliver to the Master and at the address given by the petitioner and respondent, as the case may be, six days before the day appointed for trial, a list of the votes objected to and the heads of objection to each (*p*). The Master must allow inspection and office copies of such lists to all parties concerned. No evidence may thereafter be given against the validity of any vote or on any head of objection not specified in the list, unless the High Court (as it may do) grants leave, upon terms, to do so (*p*). [469]

If the petition complains of an undue election and claims the office for some other person, the respondent may show that the election of that person also was undue (*q*). If he wishes to do so, he must deliver to the Master and at the address given by the petitioner, six days before the day appointed for trial, a list of the objections to the election upon which he intends to rely (*r*). The Master is to allow inspection and copies as before. Thereafter no evidence may be given by the respondent of any objection to the election not specified in his list, unless the High Court (as again it may do) grants leave, upon terms, to do so (*r*). [470]

**Security for Costs.**—Security for all costs, charges and expenses for which the petitioner may become liable either to witnesses or to the respondent, must be given on presentation of the petition or within three days afterwards (*s*). It is to be for such amount not exceeding

(*l*) Municipal Corpsns. Act, 1882, s. 88 (4); 10 Statutes 600; Act of 1884, s. 25 (2); 7 Statutes 522.

(*m*) Rule 9.

(*n*) Rule 10.

(*o*) Rules 11—12. As to publication, see L.G.A., 1933, ss. 287—8; 26 Statutes 458.

(*p*) Rule 7.

(*q*) Municipal Corpsns. Act, 1882, s. 93 (10); 10 Statutes 603.

(*r*) Rule 8.

(*s*) Municipal Corpsns. Act, 1882, s. 89 (1) (2); 10 Statutes 600.

£500 (usually £300) as the High Court or a judge directs, and may be ordered to be either by deposit of money in the Bank of England, or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other (*t*). If the security is given by way of recognisance, it is to contain the name and usual place of abode of each surety with such sufficient description as shall enable him to be found or ascertained, and, after being acknowledged, is to be left forthwith at the Master's office in like manner as is prescribed for the leaving of a petition. Acknowledgment may be before a judge of the High Court, or the Master in London, or a J.P. in the country, and there may be either one recognisance acknowledged by all the sureties, or separate recognisances by one or more, as may be convenient (*u*).

Within five days after presentation of the petition, the petitioner must serve on the respondent notice thereof and of the nature of the proposed security together with a copy of the petition (*a*). Service must in general be personal, but where the respondent has named an agent or given an address, service may be by delivery to the agent or by registered letter; if personal service cannot be effected, application may be made within five days to a judge of the High Court supported by affidavit showing what has been done, and the judge may, if satisfied that all reasonable effort has been made to effect personal service and to cause the matter to be brought to the notice of the respondent, order that what has been done shall be considered sufficient service subject to such conditions as he shall think reasonable (*b*). If an agent is appointed by either petitioner or respondent, he is forthwith to leave written notice at the Master's office, and thereafter service on him is sufficient. If service is evaded, the judge may order that the sticking up of a notice in the Master's office of the presentation of the petition, the prayer, and the nature of the proposed security shall be sufficient service. Immediately after service an affidavit of the time and manner thereof is to be filed with the Master (*c*). If these conditions are not fulfilled, the petition will be taken off the file (*d*). [471]

Within five days after service of the notice, or, if further security is ordered, within five days after service of notice of the nature of any further security to be given, the respondent may object in writing to any recognisance on the ground that any surety is insufficient, dead, cannot be found, is not sufficiently identified, or has not duly acknowledged the recognisance (*e*). The objection must state the grounds thereof, with particulars, and will be heard and decided by the Master either on affidavit or personal examination of witnesses as he thinks fit, subject to an appeal within five days to a judge upon summons taken out by either party to declare the security sufficient or insufficient (*f*). If the objection is allowed and the security declared insufficient, the Master or judge is to state in his order what amount is requisite to make the security sufficient, whereupon such additional amount is to be deposited with the same formalities within a further

(*t*) Municipal Corpsns. Act, 1882, s. 89 (2) and see rules 16, 17.

(*u*) Rules 24—26. For form of recognisance, see rule 25.

(*a*) Municipal Corpsns. Act, 1882, s. 89 (3); 10 Statutes 600; rule 13.

(*b*) Rule 14.

(*c*) Rule 15.

(*d*) See *Williams v. Tenby Corpns.* (1879), 5 C. P. D. 135; 20 Digest 184, 1598.

(*e*) Municipal Corpsns. Act, 1882, s. 89 (4); 10 Statutes 600. See also rules 27, 28.

(*f*) Rules 28—30.

five days ; failing which, or if any other objection is allowed and not removed, no further proceedings are to be had on the petition (g). The Master or judge may make an order as to costs, failing which they are part of the general costs of the petition, but they are to be ordered to be paid by the petitioner unless he left with the original recognisance an affidavit sworn by each surety before a J.P. or person authorised to take affidavits that he has real or personal estate sufficient, after payment of his debts, to satisfy the sum for which he is bound (h). The order for payment of costs by either judge or Master is enforceable like an order of the High Court (i). A copy of every order (other than an order giving further time for delivering particulars or for costs only) or the order itself or a duplicate if the Master so directs, and a copy of every particular delivered, is forthwith to be filed with the Master and produced at the trial by the Registrar stamped with the official seal (k).

With this exception, all interlocutory questions and matters are heard and dealt with by a judge, who has the same control of the proceedings as in the case of an ordinary action in the High Court (l).

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**Trial of Petition.**—On the expiration of the time limited for making objections, or the disallowance or removal of any objection made, the petition becomes at issue (m). Thereupon the Master is to make a list (known as "the municipal election list") of all the petitions at issue in the order of presentation, with the names of the agents of petitioners and respondents, and addresses for service of notices (n). This list is to be exhibited in his office on a notice board headed "Municipal Election List" and is to be open for inspection during office hours. The trial of petitions is to be as nearly as may be in the order in which they stand in the list, but cases where two or more candidates are made respondents to the same petition may be tried together, though the petition is to be deemed to be a separate petition against each of them (n). Where several petitions relate to the same election or to simultaneous elections for different wards of the same borough, they are to be bracketed as one, but take the place in the list of the farthest one down (n).

For the trial of election petitions, a special court is constituted, consisting of a commissioner without a jury (o). These commissioners are appointed by the judges on the rota for the trial of parliamentary election petitions, who receive from the Master copies of the municipal election list as soon as made out, and assign each petition to one commissioner for trial ; but if such commissioner dies, or declines or becomes incapable to act, they may assign another to conduct or continue it (p). The number of commissioners must not exceed five, and they are appointed for one year (q). A commissioner must be a barrister of not less than fifteen years' standing, and must not be a member of the

(g) Municipal Corpsns. Act, 1882, s. 89 (6), (7) ; 10 Statutes 600, 601 ; rule 31.

(h) Rules 32, 33. Rule 33 contains a form of affidavit which may be used.

(i) Rule 34. As to enforcement of orders for costs generally, see *post*, p. 233.

(k) Rule 35.

(l) Rule 57.

(m) Municipal Corpsns. Act, 1882, s. 90 ; 10 Statutes 601.

(n) *Ibid.*, s. 91 ; 10 Statutes 601. See also rule 39.

(o) Municipal Corpsns. Act, 1882, s. 92 (1) ; 10 Statutes 601.

(p) *Ibid.*, s. 92 (4) (5).

(q) Act of 1884, s. 36 (2) ; 7 Statutes 530.

House of Commons or hold any office or place of profit under the Crown except that of recorder; nor may he act in the case of a petition in the borough of which he is recorder, or in which he resides, or which is included in the circuit on which he practises as a barrister (r). [473]

For the purposes of the trial, the commissioner has all the powers and authority of a judge of the High Court or of assize and *nisi prius*, and his court is a court of record (s); but although he may inflict fines and commit to prison, these may be discharged or varied by the High Court or, in vacation, by a judge thereof on motion thereto by the person aggrieved on such terms as the court or judge thinks fit (t). Apart from this, the High Court has no general appellate jurisdiction over the commissioner, but he may state a case for its opinion on a point of law and postpone his certificate until after its determination; and the High Court, if it appears to them on the application of any party to the petition that the case raised can be conveniently stated in the form of a special case, may direct the same to be so stated accordingly and their determination thereon is final, except that the Court may give special leave to appeal on a point of law to the Court of Appeal, whose decision is final and conclusive (u).

Trial is to be in open court, and, so far as is practicable consistently with the interests of justice in respect of such trial, is to be continued *de die in diem* on every lawful day until its conclusion (a). The time of trial is to be fixed by the judges on the rota and signified by them to the Master, who is then to give notice in writing, fifteen days before the day fixed for the trial, of the time so fixed, by sticking up notice in his office and sending copies by post to the addresses given of the petitioner, the respondent, and the town clerk of the borough to which the petition relates; the latter is thereupon to publish the same throughout the borough (b). A judge may direct a postponement, either by order made on the application of a party to the petition, or by notice to the town clerk who is forthwith to make the same public; and in the event of the assigned commissioner not having arrived at the date of the trial or postponed trial, the commencement of the trial is *ipso facto* adjourned until the ensuing day, and so on from day to day (c). The place of trial is to be within the borough, unless the High Court, on being satisfied that special circumstances exist rendering it desirable that the trial should take place elsewhere, appoint some other convenient place for trial (d). Subject to the special provisions hereinafter set out, the principles, practice and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared not to have been duly elected, are to be observed, as far as may be, on

(r) Municipal Corpsns. Act, 1882, s. 92 (2), (3); 10 Statutes 601.

(s) *R. v. Maidenhead Corpns.* (1882), 9 Q. B. D. 494; 20 Digest 181, 1586. For this reason its order can only be proved by production of its record, *ibid.*

(t) Municipal Corpsns. Act, 1882, s. 92 (6); 10 Statutes 601.

(u) *Ibid.*, s. 93 (7), (8); 10 Statutes 602. Supreme Court of Judicature (Consolidation) Act, 1925, s. 31 (1) (j); 4 Statutes 162.

(a) Municipal Corpsns. Act, 1882, s. 93 (1); 10 Statutes 602. Act of 1884, s. 27; 7 Statutes 524.

(b) Rules 40, 41. For form of notice of trial, see rule 42.

(c) Rules 43, 44.

(d) Municipal Corpsns. Act, 1882, s. 93 (2); 10 Statutes 602. For cases on what are, and what are not, "special circumstances," see Arnold on Municipal Corpsns., 6th ed., p. 69.

a municipal election petition (*e*), and the High Court has the same powers, jurisdiction and authority with regard thereto as if the petition were an ordinary action within its jurisdiction (*f*). No proceedings are to be defeated by any formal objection. The election court may adjourn from time to time, and from one place to another place within the borough or place where it is held; no formal adjournment is necessary (*g*), but the trial is to be deemed adjourned and may be continued from day to day until the inquiry is concluded. [474]

The prescribed title of the court is "Court for the trial of a municipal election petition for the borough of (*or as may be*)," and this is a sufficient title for all proceedings (*h*), but the court is a branch of the High Court of Justice and the petition is headed accordingly. There is to be a registrar, who is appointed by the election judges at the same time as they assign the petition, and who is to perform all the functions incident to the officer of a court of record and any other duties assigned to him (*i*); he need not be, but usually is, a barrister. The commissioner may appoint a crier and officer of the court; and the shorthand writer to the House of Commons or his deputy is also to attend (*k*). The latter is to receive from the Master a copy of the notice of trial, and, on attendance at the election court, is to be sworn faithfully and truly to take down the evidence given at the trial, which he must take down at length (*l*). It is the duty of the town clerk to provide proper accommodation for holding the election court, and his expenses in so doing are to be paid out of the general rate fund of the borough (*m*). All constables, superintendents of police and gaolers are to give their assistance to the court; if a gaoler or officer of a prison makes default in receiving or detaining a prisoner committed under Part IV of the Act of 1882, he is to be liable to a daily penalty of £5 (*n*).

Witnesses at the trial of a petition are summoned and sworn as at *nisi prius*, and the court may compel attendance, and may itself examine witnesses though not called by either party (*o*). Attendance is compelled by order in writing requiring the attendance as a witness of any person who appears to the court to have been concerned in the election, and refusal to obey the order involves contempt of court (*p*).

Cross-examination is permitted, but no witness who has voted at the election is to be required to state for whom he has voted (*q*). The reasonable expenses of witnesses may be allowed by the court or the registrar on the High Court scale; if the witness was called by the court, his expenses are part of the cost of providing the court, but otherwise are costs of the petition (*r*). [475]

(*e*) Municipal Corporns. Act, 1882, s. 100 (3); 10 Statutes 606.

(*f*) *Ibid.*, s. 100 (4); *ibid.*

(*g*) *Ibid.*, s. 93 (3); 10 Statutes 602. See also rule 45.

(*h*) Rule 49.

(*i*) Rule 50.

(*k*) Rules 51, 52.

(*l*) Municipal Corporns. Act, 1882, s. 99 (4); 10 Statutes 606. See also rule 52.

(*m*) *Ibid.*, s. 99 (1) and L.G.A., 1933, s. 185; 26 Statutes 407.

(*n*) Municipal Corporns. Act, 1882, s. 99 (2); 10 Statutes 605.

(*o*) *Ibid.*, s. 94 (1)—(3); 10 Statutes 603.

(*p*) *Ibid.*, s. 94 (2). For form of order to compel attendance as a witness, see rule 54. For form of warrant in case of committal for contempt, see rule 55. The warrant is executed like High Court process (rule 56).

(*q*) L.G.A., 1933, Sched. II., Part III., para. 53; 26 Statutes 491.

(*r*) Municipal Corporns. Act, 1882, s. 94 (9); 10 Statutes 603. See also rule 53.

**Withdrawal of Petition.**—A petitioner may not withdraw his petition without the leave of the election court or High Court on special application (*s*). Written notice of application for leave to withdraw, stating the grounds on which the application is to be supported and signed by the petitioner or his agent, is to be left at the Master's office, and copies are to be sent by the petitioner to the respondent and to the town clerk, who is forthwith to publish the same in the borough (*a*). Affidavits must be made by all parties to the petition and their solicitors, stating that to the best of the deponent's knowledge and belief no agreement or terms of any kind have been made or undertaking entered into in relation to the withdrawal of the petition, or, if there is a lawful agreement, setting it out and making the foregoing statement subject thereto, and the affidavits of the applicant and his solicitor are further to set out the ground on which the petition is sought to be withdrawn (*b*). Where more than one solicitor is concerned for either petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit is to be made by all such solicitors. The High Court has, however, power to dispense with the affidavit of any particular person if it seems to the Court on special grounds to be just to do so (*c*). The making of any agreement, or terms, or undertaking in relation to the withdrawal of a petition where such agreement, etc., is for such withdrawal in consideration of (1) a payment, or (2) the vacating of the seat, or (3) the withdrawal of any other petition, or the omission of any agreement relating to the withdrawal, whether lawful or unlawful, from the affidavit, are misdemeanors punishable on conviction on indictment with imprisonment for a term not exceeding twelve months and a fine not exceeding £200 (*d*).

Copies of the affidavits are to be delivered a reasonable time before the hearing of the application to the Director of Public Prosecutions, who, or whose assistant or representative (*e*), may be heard in opposition to the allowance of the withdrawal of the petition (*f*). It is his duty to attend by himself or an assistant or representative (*e*), at every trial of a municipal election petition, and to obey any directions given to him by the election court with respect to evidence on the trial, prosecution of offenders, and reporting as to guilt of corrupt or illegal practices on the part of persons to whom notice to attend has been given (*g*). It is further his duty, without any direction from the court, to cause the attendance of, and (with leave) to examine, witnesses able to give material evidence as to the subject of the trial, and if necessary to prosecute offenders before the election or any other competent court (*g*). The court may receive evidence on oath of any persons whose evidence is considered material. The Director and his assistant or representative may be allowed such expenses as the Treasury may approve. Such expenses are in the first place to be defrayed by the Treasury and, so far as not paid by the defendant in a prosecution, become expenses of the election court; but the court has power, if for any reasonable cause

(*s*) Municipal Corporns. Act, 1882, s. 95 (1); 10 Statutes 604.

(*a*) *Ibid.*, s. 95 (2); 10 Statutes 604. See also rules 58—60.

(*b*) Act of 1884, s. 26 (1), (2), (3); 7 Statutes 523.

(*c*) *Ibid.*, s. 26 (1); *ibid.*

(*d*) *Ibid.*, s. 26 (4).

(*e*) As to the qualification of an assistant or representative, see *ibid.*, ss. 26 (5), 28 (8); 7 Statutes 523, 525.

(*f*) Act of 1884, s. 26 (5); 7 Statutes 523.

(*g*) *Ibid.*, s. 28 (1), (2), (3).

it seems just to do so, to order all or part of such costs to be repaid to the Treasury by the parties to the petition or such of them as the court may direct (*h*). [476]

After due publication of the notice of application for leave to withdraw, the application is heard, and on its hearing any person who might have been a petitioner in respect of the election may apply to the court to be, and if the court thinks fit may be, substituted for the person so withdrawing as petitioner (*i*). He must first, within five days of the publication of the notice of application for leave to withdraw, give written and signed notice to the Master of his intention to apply, though the want of such notice is not to defeat his application if the latter is duly made at the hearing. The time and place of the hearing of the application will be fixed by a judge, and will be fixed either before the High Court or a judge as he thinks advisable, but is to be at least a week after receipt of the notice by the Master, and notice of the time and place so appointed is to be given to any persons applying to be substituted as petitioners (*k*). The court has power, if it thinks that the proposed withdrawal is induced by any corrupt bargain or consideration, to order that any security given by the original petitioner shall remain as security for the costs of the substituted petitioner, and, to the extent of the security, the original petitioner and his sureties may be made liable for the costs of the substitute (*l*). The court has also this power if, in their opinion, the proposed withdrawal was the result of any agreement, terms or undertaking prohibited by sect. 26 of the Act of 1884 (*m*). In the absence of such an order, the substituted petitioner must give security to the same amount as that of the original petitioner within five days and before he proceeds with the petition, and generally he is to stand as nearly as may be in the same position and with the same liabilities as the original petitioner (*n*). The petitioner withdrawing will be liable to pay the costs of the respondent, and these will be on the higher scale as between solicitor and client unless there was good reason for the petition (*o*). If there are several petitioners, all must consent before withdrawal can be made (*p*). In every case of withdrawal by leave, the court is to report in writing to the High Court whether in the opinion of the election court the withdrawal was the result of any agreement, terms or undertaking, or was in consideration of any payment, the vacating of the seat, the withdrawal of any other petition, or any other consideration, and if so is to state the circumstances attending the withdrawal (*q*). [477]

**Abatement of Petition.**—If a petitioner, or the last survivor of several petitioners, dies, the petition abates, but not so as to affect the liability of the petitioner or any other person to the payment of costs already incurred (*r*). Notice is to be given of such abatement in the same way as notice of withdrawal, and thereupon there is the same right for any person who could have petitioned on the election to apply

(*h*) Act of 1884, s. 28 (8), (9); 7 Statutes 525.

(*i*) Municipal Corpsn. Act, 1882, s. 95 (3); 10 Statutes 604.

(*k*) Rules 61—62.

(*l*) Municipal Corpsn. Act, 1882, s. 95 (4); 10 Statutes 604.

(*m*) Act of 1884, s. 26 (6); 7 Statutes 523. See *ante*, p. 228.

(*n*) Municipal Corpsn. Act, 1882, s. 95 (5), (6); 10 Statutes 604.

(*o*) *Ibid.*, s. 95 (7); 10 Statutes 604. Act of 1884, s. 29 (3); 7 Statutes 526.

(*p*) *Ibid.*, s. 95 (8); 10 Statutes 604.

(*q*) Act of 1884, s. 26 (7); 7 Statutes 523.

(*r*) Municipal Corpsn. Act, 1882, s. 96 (1), (2); 10 Statutes 604.

to be substituted for the deceased petitioner. Such application may be made to the election court, or by way of motion or summons at Chambers to the High Court or a judge, and must be made within one month or such further time as may be allowed (s). The usual security for costs must be given (t).

If before trial of the petition a respondent, other than a returning officer, dies or resigns or otherwise ceases to hold the office to which the petition relates, or gives notice in writing signed by him and left at the Master's office that he does not intend to oppose the petition, then, if notice of trial has been given, the Master is to countermand the notice in as nearly as possible the same manner in which it was given (u). First, however, he is to send copies of the notice to the petitioner or his agent, and to the town clerk who is to publish the same in the borough; and thereupon any person who might have been a petitioner in the election may apply within ten days of the notice or such further time as the court may allow, either to the election court or to the High Court, to be admitted as a respondent to oppose the petition and may be so admitted, except that the number of persons so admitted must not exceed three (a). Under rule 64, the petitioner may draw attention to the death of the respondent by giving notice in at least one newspaper circulating in the borough and leaving copies with the town clerk and the Master. [478]

If all the respondents have given notice of their intention not to oppose, and there has been no substitution, the High Court or a judge may under rule 47 either declare the election void or direct the trial to proceed. In the absence of a declaration, the trial proceeds notwithstanding that the respondent has ceased to hold the office in question (b), and any person who might have been a petitioner can, under sect. 97 (1) of the Municipal Corporations Act, 1882, be substituted as respondent. Notice of an order declaring the election void or directing the trial to proceed is to be given forthwith by the Master to the town clerk, and, if the election is declared void, the office is to be deemed to be vacant from the first day (not being a *dies non*) after the date of the order (c). An order may also be made as to costs, and these may be given against a respondent who fails to give notice of intention not to oppose as from the date on which he might have given it, even if the petitioner is condemned in the costs before that date (d).

After giving notice of intention not to oppose, a respondent is not to be allowed to appear or act as a party against the petition in any subsequent proceedings (e). [479]

**Conclusion of Trial.**—At the conclusion of the trial, the election court determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and forthwith certify their determination in writing to the

(s) Municipal Corpsn. Act, 1882, s. 96 (3); 10 Statutes 604. See also rules 63, 64.

(t) *Ibid.*, s. 96 (4).

(u) Rules 46, 65.

(a) Municipal Corpsn. Act, 1882, s. 97 (1); 10 Statutes 604. See also rules 64,

66—7.

(b) *Ibid.*, s. 93 (11); 10 Statutes 603.

(c) Rule 47.

(d) *Watts v. Hemming* (1907), 71 J. P. 504; 20 Digest 142, 1158.

(e) Municipal Corpsn. Act, 1882, s. 97 (2); 10 Statutes 605.

High Court, such determination being final as to the matters at issue on the petition (f).

If corrupt practices were alleged, the court at the same time report to the High Court in writing (1) whether a corrupt practice has been proved and its nature, (2) the names of the persons proved guilty thereof, and (3) whether corrupt practices have, or there is reason to believe have, extensively prevailed at the election ; and the court may also make a special report as to any matters arising in the course of the trial, which ought to be submitted to the High Court (g). If it is so reported that corrupt practices (other than treating or undue influence) have been committed by or with the knowledge and consent of a candidate, or treating or undue influence has been committed by the candidate personally, the candidate is to be incapable of ever holding a corporate office in the borough, and, if he was elected, his election is void (h). Further he is to be subject to the same incapacities as if, at the date of the report, he had been convicted of a corrupt practice (h) ; if the corrupt practice was committed by a candidate's agent, the election is void and the candidate is disqualified for three years (h). [480]

If illegal practices (i) were alleged, the election court report in writing to the High Court whether any candidate or his agent has been guilty of any such illegal practice (k). If it is so reported that illegal practices or offences of illegal payment, employment or hiring have so extensively prevailed that they may be reasonably supposed to have affected the result of the election, the election is void and the candidate, whether or not elected, is disqualified for election to any corporate office during the period for which the office was to have run (l).

Charges of corrupt practices may be gone into before proof of agency (m). A copy of any certificate or report made to the High Court on the trial of the petition, or of the statement of the decision when arrived at by the High Court on a case stated, is to be sent by the High Court to the Secretary of State (n), and a copy of the certificate and statement of any such decision are to be certified under the hands of two or more judges to the town clerk of the borough (o). [481]

At the conclusion of the trial, money deposited in court by way of security for costs which is no longer required for such security, is to be returned to the depositor or otherwise disposed of as justice may require. It will be disposed of either by a rule of the High Court, or an order of a judge, respectively made after such notice of intention to apply and proof that all just claims have been satisfied or provided for as the court may require have been duly given or made ; the Court or a judge has full power to dispose of all claims at law or in equity to the

(f) Municipal Corporns. Act, 1882, s. 93 (4) ; 10 Statutes 602.

(g) *Ibid.*, s. 93 (5), (6).

(h) Act of 1884, s. 3 ; 7 Statutes 512, and see title CORRUPT AND ILLEGAL PRACTICES.

(i) As to what are illegal practices, see title CORRUPT AND ILLEGAL PRACTICES.

(k) Act of 1884, s. 8 (2) ; 7 Statutes 514.

(l) *Ibid.*, s. 18 ; 7 Statutes 517. As to reports exonerating the candidate personally in certain cases of corrupt and illegal practices by agents and the effect thereof, and the power of the High Court and the election court to except innocent acts from being illegal practices, see *ibid.*, ss. 19, 20 ; 7 Statutes 518, and title CORRUPT AND ILLEGAL PRACTICES at pp. 95, 96 of Vol. 4.

(m) Municipal Corporns. Act, 1882, s. 93 (9) ; 10 Statutes 603.

(n) This is any one of the principal Secretaries of State (Interpretation Act, 1889, s. 12 ; 18 Statutes 995), normally the Home Secretary.

(o) Municipal Corporns. Act, 1882, s. 93 (12), (13) ; 10 Statutes 603.

money deposited (*p*). The rule or order may direct payment either to the depositor or to any person entitled to receive the same, and the amount will be drawn by the Lord Chief Justice whose draft is in all cases a sufficient warrant to the Bank of England for all payments made thereunder (*p*). [482]

Where as a result of the trial of a petition an election is declared void and no other candidate has been declared elected in the room of the candidate unseated, a new election is to be held to supply the vacancy as on a casual vacancy (*q*). For the purposes of such election any duties to be performed by a mayor, alderman or other officer are, if he has been declared not to have been elected, to be performed by a deputy or other person who might have acted for him if he had been incapacitated by illness (*r*).

If an elected candidate is later unseated upon petition, acts done by him in the execution of his office before the decision is certified to the town clerk, are not invalidated by reason of the subsequent declaration (*s*). [483]

**Costs.**—Certain expenses connected with the trial of an election petition are expenses of the court. These include the remuneration and allowances to be paid to the commissioner for his services in respect of the trial and to the officers and clerks employed and to the shorthand writer, on a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions with the approval of the Treasury. All such expenses are paid in the first instance by the Treasury, and are to be repaid to them on their certificate out of the general rate fund of the borough (*t*).

All costs, charges and expenses of and incidental to the presentation of an election petition and the proceedings consequent thereon other than the "expenses of the court" previously mentioned, are to be defrayed by the parties to the petition in such manner and proportion as the election court determines. In particular, the court may order any costs which, in its opinion, have been caused by vexatious conduct, or unfounded allegations or objections on the part of either petitioner or respondent, or needless expense incurred or caused by either of them, to be defrayed by the party causing it even if otherwise successful (*u*). Further the election court may in its discretion order that the remuneration and allowances of the election court and its officers, or the expenses of the town clerk for providing the election court (*a*), shall be repaid, wholly or in part, to the Treasury or the town clerk as the case may be, by the petitioner if it finds that the petition was frivolous and vexatious, or by the respondent if it finds that he was personally guilty of corrupt practices at the election (*b*). If it appears to the

(*p*) Rules 18—23.

(*q*) Municipal Corporns. Act, 1882, s. 103; 10 Statutes 607; and see title CASUAL VACANCY.

(*r*) Municipal Corporns. Act, 1882, s. 103. As to a deputy mayor, see L.G.A., 1933, s. 20 (26 Statutes 315), and title MAYOR.

(*s*) Municipal Corporns. Act, 1882, s. 102; 10 Statutes 607. But see *Nell v. Longbottom*, [1894] 1 Q. B. 767; 20 Digest 185, 1094.

(*t*) Municipal Corporns. Act, 1882, s. 101 (1); 10 Statutes 606. If the Treasury make an error in this certificate, they may cancel it and issue a second one, their act not being a judicial one (*R. v. Maidenhead Corpns.* (1882), 9 Q. B. D. 494; 20 Digest 181, 1586).

(*u*) Municipal Corporns. Act, 1882, s. 98 (1); 10 Statutes 605.

(*a*) *Ante*, p. 227.

(*b*) Municipal Corporns. Act, 1882, s. 101 (2); 10 Statutes 607.

election court that a corrupt practice has not been proved to have been committed by or with the knowledge or consent of the respondent and that he took all reasonable means to prevent corrupt practices being committed on his behalf, the court may order the whole or part of the costs of the petition to be paid by (1) the borough, if it finds that corrupt practices prevailed extensively in reference to the election, or (2) any persons who are proved to have been, whether by providing money or otherwise, extensively engaged in or to have encouraged or promoted corrupt practices thereat, after giving such persons an opportunity of being heard (c). In case (2), the court may further order that if the costs cannot be recovered from one or more of such persons, they are to be paid by some other of them or by either party to the petition. It may also order payment by the defendant of the costs of a prosecution for an offence against the Act of 1884 (c). [484]

The costs are to be taxed by the Master, or at his request by any Master of the Superior Court upon the rule of court or judge's order by which the costs are payable (d). When taxed they may be recovered in the same way as costs of ordinary High Court proceedings, and, to the extent of any money remaining in the bank out of the security for costs, by order of the Lord Chief Justice. If a petitioner neglects or refuses for three months after demand to pay to a witness or to the respondent the certified amount of his costs and such neglect or refusal is proved to the High Court within one year of the demand, any person who has entered into a recognisance relating to the petition is to be held to have defaulted therein, and the Master is to certify his recognisance as forfeited whereupon it is to be dealt with under the Levy of Fines Act, 1822 (e). Further an order made for repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but any deposit made or security given is not to be applied towards any such repayment until all costs and expenses payable by either petitioner or respondent to any party to the petition have first been satisfied (f). [485]

**Application to County Councils.**—In the application of Part IV. of the Municipal Corporations Act, 1882, as amended by the Act of 1884, to county councils these provisions are to apply in such terms and with such modifications as are necessary to make them applicable to county councils and their chairmen, members, committees and officers (g). For this purpose, therefore, "county" should be read for "borough," "chairman" for "mayor," "county aldermen" and "county councillors" for "aldermen" and "councillors of the borough," "clerk of the county council" for "town clerk," and "local government elector" for "burgess" (h).

Sect. 75 of the L.G.A., 1888, does not in terms apply the Municipal Election Petition Rules, 1888 (i), to county councils, but as sect. 2 (1) of the Act of 1888 (k) provided that a county council and its members

(c) Act of 1884, s. 29; 7 Statutes 526.

(d) Rule 68.

(e) 11 Statutes 236; Municipal Corpsns. Act, 1882, s. 98 (3); 10 Statutes 605; Parliamentary Elections Act, 1868, s. 42; 7 Statutes 421.

(f) Municipal Corpsns. Act, 1882, s. 101 (3); 10 Statutes 607.

(g) L.G.A., 1888, s. 75; 10 Statutes 746.

(h) As to the last substitution, see Representation of the People Act, 1918, Sched. VI., para. 2; 7 Statutes 588.

(i) See note (d), ante, p. 220.

(k) 10 Statutes 686.

should be elected and be in the like position in all respects (subject to the provisions of the Act of 1888) as the council of a borough divided into wards, it has been considered that the rules of 1883 probably apply. No adapting rules seem to have been made.

A person on whose behalf votes have been given at an election of county aldermen, but who was not elected, cannot present an election petition as being a candidate, because that term is defined in sect. 77 of the Municipal Corporations Act, 1882 (as applied), as meaning a person who has been elected or nominated or has declared himself a candidate, and nominations are not contemplated at an election of aldermen (*l*). [486]

**Application to District and Parish Councils.**—In these instances, the adaptation of Part IV. of the Municipal Corporations Act, 1882, and of the Acts of 1884 and 1911 are subject to such adaptations, alterations and exceptions as may be made by the election rules of the Home Secretary (*m*). As regards the Municipal Election Petition Rules, 1883 (*n*), these were adapted to election petitions in respect of elections under the L.G.A., 1894, by rules made on January 14, 1895 (*o*).

The election rules of 1934, relating respectively to urban and rural district councillors (*p*), each contain in the First Schedule a list of adaptations which are obviously necessary, such as the term "borough," or terms in which the word "borough" or "municipal" occurs. For the most part, the adaptations are on similar lines, but whereas the Urban District Councillors Election Rules adapt sect. 93 (2) of the Municipal Corporations Act, 1882 (*q*), so as to require the trial of an election petition ordinarily to take place within the urban district, the Rural District Councillors Election Rules by a special adaptation allow the trial to take place within the rural district, or any borough or urban district contiguous thereto. The clerk of the U.D.C. or the R.D.C. (as the case may be) is substituted for the town clerk. [487]

In addition, three enactments of the Acts of 1882 and 1884 are so altered as to require them to be set out afresh in sect. 4 of the Urban District Councillors Election Rules. These comprise (1) sect. 89 (2) of the Municipal Corporations Act, 1882 (*r*), which as redrafted alters the security to be given on the presentation of an election petition to £50, unless in any case the High Court, or a judge of the High Court, on summons order either less security, or a larger amount not exceeding £800 to be given, (2) sect. 13 (1) (b) of the Act of 1884 (*s*), which is altered to allow polling agents to be employed to the extent allowed by the Election Rules (*t*), and (3) sect. 25 (1) of the Act of 1884 (*u*) which as altered allows a petition complaining of an illegal practice to be presented at any time within six weeks after the day of election.

Similar alterations of the enactments above-mentioned will be found

(*l*) *Cambridge County Council Case, Fordham v. Webber*, [1925] 2 K. B. 740; Digest (Supp.).

(*m*) L.G.A., 1933, ss. 40 (2), 54 (2); 26 Statutes 325, 332.

(*n*) See note (*d*), *ante*, p. 220.

(*o*) See S.R. & O., Rev. 1904, Vol. XII., p. 669. The provisions of the L.G.A., 1884, as to elections have now been superseded by L.G.A., 1933, but new rules have not yet (May 1st, 1935) been made.

(*p*) S.R. & O., 1934, Nos. 545, 546.

(*q*) 10 Statutes 602.

(*r*) *Ibid.*, 600.

(*s*) 7 Statutes 516.

(*t*) See para. 13 of Part. III. of the Second Schedule to the Election Rules.

(*u*) 7 Statutes 522.

in sect. 5 of the Rural District Councillors Election Rules, with an additional provision rendering the prohibition as to the use of licensed premises in sect. 16 (1) of the Act of 1884 (a) inapplicable to the use of premises situated in a rural district for a meeting for promoting or procuring the election of a rural district councillor. [488]

The adaptations and alterations made by the Parish Councillors Election Rules, 1934 (b), are on very similar lines to those in the Rural District Councillors Election Rules, and will be found in sect. 7 and the Fifth Schedule to the Rules. In addition, sect. 87 (1) (d) of the Municipal Corporations Act, 1882 (c), is altered by para. (2) of sect. 7 of the Rules so as to prevent a petition on the ground that the parish councillor was not duly elected by a majority of lawful votes where he was elected at a parish meeting. The reason for this is that under para. 20 of Part I. of the First Schedule to the Rules, if no poll has to be taken, the declaration of the chairman of the parish meeting as to the result of the election is final, and cannot be questioned in any proceeding whatever on the ground that any of the persons so declared elected were not duly elected by a majority of lawful votes. Two further adaptations will be found in the Fifth Schedule to the Parish Councillors Election Rules which do not occur in the other Election Rules. Thus sect. 88 (2) of the Municipal Corporations Act, 1882 (d), is adapted to allow a chairman of the parish meeting for the election to be made a respondent to an election petition, as an alternative to the returning officer. For town clerk is substituted the clerk of the council of the rural district in which the parish is situated.

The validity of an election of parish councillors cannot be called in question by an application for a *mandamus* or *quo warranto*; the proper course is to present an election petition (e). [489]

**London.**—In the application of Part IV. of the Municipal Corporations Act, 1882, and of the Act of 1884, to municipal elections in the City of London, "municipal election" means an election of mayor, alderman or common councilman or sheriff and includes the election of any officer chosen by the liverymen, and also elections of chamberlains, bridgemasters and the auditors of the respective accounts of these officers, all officers chosen in and for the City by the liverymen, and all elections of aldermen and common councilmen chosen at the ward-motes of the City (f).

Elections to the offices of chairman, alderman or councillor of the L.C.C. are, for this purpose, governed by the same law as that relating to county councils outside London (g).

As respects metropolitan borough councils, Part IV. of the Municipal Corporations Act, 1882, and the Act of 1884 seem to be applied to the mayor and aldermen by sect. 2 (4) of the London Government Act, 1899 (h), which extends to them the provisions of the L.G.A., 1888, with respect to the chairman of the county council and the county

(a) 7 Statutes 517.

(b) S.R. & O., 1934, No. 1318.

(c) 10 Statutes 599.

(d) *Ibid.* 600.

(e) *R. v. Miles, Ex p. Cole* (1895), 64 L. J. (Q. B.) 420; 20 Digest 182, 1589.

(f) Act of 1884, s. 35; 7 Statutes 528. City of London Ballot Act, 1887 (50 & 51 Vict. c. xiii.), s. 2, 9.

(g) L.G.A., 1888, ss. 40, 75; 10 Statutes 718, 746.

(h) 11 Statutes 1226.

aldermen respectively. If it should be desired to question the election of a mayor or alderman by an election petition, the procedure already set out for a petition relating to the chairman of a county council or county aldermen should apparently be followed. [490]

The machinery relating to metropolitan borough councillors differs somewhat, because here Part IV. of the Act of 1882 and the Act of 1884 are extended to such councillors by means of sect. 2 (5) of the London Government Act, 1899 (*i*), which in turn applied to them the law relating to the election of administrative vestries in London. To these vestries, Part IV. of the Act of 1882 and the Act of 1884 were applied by sect. 48 (3) of the L.G.A., 1894 (*k*), subject, however, to such adaptations, alterations and exceptions as might be made by the rules relating to the election. For these adaptations, etc., one must turn to rules 23 and 24 of the Metropolitan Borough Councillors Election Rules, 1931 (*l*). They closely resemble those contained in the Urban District Councillors Election Rules, 1934 (*m*), and include alterations as to the amount of security, the employment of polling agents and the period within which a petition complaining of an illegal practice may be presented.

The alterations of the law as to the election of members of the L.C.C. and of metropolitan borough councils made by sects. 31—37 of the L.C.C. (General Powers) Act, 1934 (*n*), do not seem to affect election petitions. (See also title ELECTIONS *post* at pp. 260—264.) [491]

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(*i*) 11 Statutes 1226.

(*k*) 10 Statutes 807.

(*l*) S.R. & O., 1931, No. 22. These rules have been amended by S.R. & O., 1933 (No. 1127), and 1934 (No. 963), but not so as to affect election petitions.

(*m*) See *ante*, p. 234.

(*n*) 27 Statutes 418—422.

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# ELECTIONS

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*See also titles :*

ACCEPTANCE OF OFFICE ;  
ALDERMEN ;  
ALTERATION OFWARDS ;  
BALLOT ;  
BOROUGH COUNCILLOR ;  
CASUAL VACANCY ;  
CHAIRMAN OF COUNTY COUNCIL ;  
CHAIRMAN OF PARISH COUNCIL ;  
CHAIRMAN OF PARISH MEETING ;  
CHAIRMAN OF RURAL DISTRICT  
COUNCIL ;  
CHAIRMAN OF URBAN DISTRICT  
COUNCIL ;  
CLERK OF THE COUNTY COUNCIL ;  
CORRUPT AND ILLEGAL PRACTICES ;  
COUNTY BOROUGH ;  
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MENT ;  
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MAYOR ;  
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NON-COUNTY BOROUGH ;  
PARISH COUNCIL ;  
PARISH COUNCILLOR ;  
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REGISTRATION OF ELECTORS ;  
REGISTRATION OFFICER ;  
RETURNING OFFICER ;  
RURAL DISTRICT COUNCIL ;  
TOWN CLERK ;  
URBAN DISTRICT COUNCIL .

FOR THE GENERAL LAW RELATING TO ELECTIONS, see HALSBURY'S LAWS OF ENGLAND (2 ED.), VOL. 12, TITLE "ELECTIONS."

#### INTRODUCTION

This title will deal with the conduct of a local government election ; that is, with the election of persons to represent on the council the electors of each ward or other electoral area. The election of mayor and aldermen will not be discussed here as these subjects form separate titles (*q.v.*), and the qualifications and disqualifications for membership of a local council are also omitted (*a*). Election agents for local government elections and election petitions have also been dealt with separately (*b*). The present title deals with elections from the official point of view, viz. that of the returning officer.

The present law relating to the conduct of local government elections is largely consolidated in the Second Schedule to the L.G.A., 1933 (*c*). References in this title are to this Schedule unless stated to the contrary. This has been applied to the election of county councillors by sect. 15 of the Act (*d*), to that of borough councillors by sect. 29 (*e*), to that of district councillors by sect. 40 (*f*), and to that of parish councillors by sect. 54 (*g*). As regards the election of district and parish councillors, the procedure will be governed also by rules made by the Home Secretary, and the Second Schedule will apply to elections in these cases subject to those rules. In practice, however, the difference between the statutory system (which applies wholly to the election of county and borough councillors) and the system of election rules will not be great, although it must be remembered that the Schedule as enacted applies only to the election of county and borough councillors. Such differences as there may be in the procedure at the election of district and parish councils will be described later (pp. 254, 256).

[492]

Before considering the actual steps to be taken by the Returning Officer at an election, it is well to note the provisions of sect. 70 of the Act of 1933 (*h*). Sub-sect. (1) provides that "an election held under

(*a*) See titles ALDERMEN ; BOROUGH COUNCILLOR ; COUNTY COUNCILLOR ; DISTRICT COUNCILLOR ; LONDON COUNTY COUNCIL ; METROPOLITAN BOROUGH ; PARISH COUNCILLOR.

(*b*) See *ante*, pp. 216-220.

(*c*) 26 Statutes 474.

(*e*) *Ibid.*, 319.

(*g*) *Ibid.*, 332.

(*d*) *Ibid.*, 312.

(*f*) *Ibid.*, 325.

(*h*) *Ibid.*, 343.

this Act shall not be invalidated by non-compliance with the provisions of the Second Schedule to this Act, or mistake in the use of the prescribed forms, if it appears to the court having cognisance of the question that the election was conducted in accordance with the principles laid down in this Act and that the non-compliance or mistake did not affect the result of the election." The last fourteen words assimilate the repealed provisions of sect. 72 of the Municipal Corporations Act, 1882 (*i*), to those of sect. 13 of the Ballot Act, 1872 (*k*), and it may be noted in passing that the provisions of the Second Schedule to a great extent reproduce the provisions of the Act of 1872. Sub-sect. (2) of sect. 70 of the Act of 1933, reproducing sect. 241 of the Act of 1882 (*l*), provides that "No misnomer or inaccurate description of any person or place named in any register of electors, electors list, nomination paper, ballot paper, voting paper, or notice, shall affect the full operation of that document with respect to that person or place, in any case where the description of the person or place is such as to be commonly understood." [493]

#### ELECTORAL AREAS

For the purposes of representation, the whole area is generally divided into smaller units known as electoral divisions or wards. Thus for the election of a county council, the county is divided into electoral divisions, each of which returns one councillor (see the title COUNTY ELECTORAL DIVISIONS). A borough or urban district may or may not be divided into wards (see title ALTERATION OF WARDS), but if so three or more councillors are usually elected for each ward. But a rural district cannot (as such) be divided into wards, and rural district councillors are elected for a parish, a combination of parishes or a ward of a parish (see sect. 38 (1) of the L.G.A., 1933) (*m*). Parish councillors are elected for the parish or for a ward of the parish (*n*), and in a few instances two or more parishes are grouped under a common parish council by an order of the county council (*o*). But in such cases an election of separate representatives for each parish must be held. [494]

It will be convenient in this article to employ the term "electoral area" to denote the area for which the election is held, viz. an electoral division or ward, or, where the borough or district is not divided into wards, the whole of the borough, district or other area for which the election is held.

The electors of each ward return a specified number of persons to represent them on the council. Where there are no wards, the electors of the whole area will vote to fill vacancies.

It is now proposed to deal with an election of county or borough councillors in the order in which the proceedings will be dealt with by the Returning Officer or his deputy. The appointment of returning officers is dealt with under the title RETURNING OFFICER, and the special arrangements for filling a casual vacancy are dealt with under the title CASUAL VACANCY (*p*). The procedure relating to the election of district and parish councillors in so far as it differs from that at county and

(*i*) 10 Statutes 597.

(*l*) 10 Statutes 654.

(*n*) See L.G.A., 1933, s. 52 (4), (5); 26 Statutes 331.

(*o*) See *ibid.*, s. 45; 26 Statutes 327.

(*k*) 7 Statutes 433.

(*m*) 26 Statutes 323.

(*p*) See Vol. II.

borough elections, will be considered after the general procedure has been described. [495]

#### ELECTION OF COUNTY AND BOROUGH COUNCILLORS

**Day of Election.**—This is the day on which the poll will be held if the election is a contested election. Ordinary elections of county councillors are held every third year on such day, not being earlier than March 1 or later than March 8, as the county council may fix at a meeting held not later than January 25 preceding. If the county council do not fix a date, the day of election is March 8 (*q*). The next election will take place in March, 1937.

On the other hand, an ordinary election of borough councillors is held on November 1 of each year (*r*).

If March 8 or November 1 should be a Sunday, the day of election is postponed to the Monday following by sect. 295 of the L.G.A., 1933 (*s*). [496]

**Notice of Election.**—Notice of election must be prepared in the form prescribed by the County and Borough Election Forms Regulations, 1934 (*t*), and published on or before the 20th day before the day of election of county councillors, or on or before the 12th day before the day of election of borough councillors (*u*). In an election of a county councillor, the notice of election must be prepared and signed by the returning officer, or, if the electoral division is co-extensive with or wholly comprised in a borough, by the town clerk. The notice is then published by being affixed to some part of the council offices and town halls of each county district and borough situate within the county. If those buildings do not happen to be within the electoral division, the notice must be affixed in such other places as the returning officer, or the town clerk of the borough concerned, may think fit (*a*).

In an election of councillors of a borough, the notice must be prepared and signed by the town clerk and affixed to the town hall and in each ward of the borough (*a*). [497]

**Nominations.**—Every candidate must be nominated, that is, proposed and seconded, by two local government electors of the electoral area for which he stands (L.G.A., 1933, Sched. II., Part I., para. 2 (1)). The nomination of each candidate must be made on a separate nomination paper in the form prescribed by the County and Borough Election Forms Regulations, 1934 (*b*), stating the full name, place of residence and description of the candidate, and must be signed by the proposer and seconder, and by eight other local government electors for the electoral area as assenting to the nomination (L.G.A., 1933, Sched. II., Part I., para. 2 (2)). No person may sign more than one nomination paper in respect of the same electoral division at an election of county councillors, and no person may sign more than one nomination paper in respect of the same candidate nor for more than one ward at an election

(*q*) L.G.A., 1933, s. 9; 26 Statutes 310.

(*r*) *Ibid.*, s. 23 (3); *ibid.*, 317.

(*s*) 26 Statutes 462.

(*t*) S.R. & O., 1934, No. 544.

(*u*) L.G.A., 1933, Sched. II., Part I., para. 1, Part II.; 26 Statutes 474, 479.

(*a*) *Ibid.*, Sched. II., Part I., para. 1; *ibid.*, 474.

(*b*) S.R. & O., 1934, No. 544.

of borough councillors. A person is also precluded from signing more nomination papers at an election of borough councillors than there are vacancies in the electoral area to be filled. If more nominations are signed by an elector than is permitted, his signature is operative only in the case of the paper or papers, as the case may be, up to the permitted number which are first delivered (L.G.A., 1933, Sched. II., Part I., para. 2 (3), (4)). [498]

Nomination papers must be provided and supplied to all electors requiring them, and if required by an elector must be prepared for signature, by the proper officer, who is the returning officer at an election of county councillors for an electoral division not co-extensive with or wholly comprised in a borough, or the town clerk at an election of county councillors for an electoral division so included in a borough and also at an election of borough councillors (L.G.A., 1933, Sched. II., Part I., para. 2 (5), (6)). [499]

A person is not validly nominated unless he gives his written consent to nomination on or within one month before the last day for the delivery of nomination papers and has it attested by one witness. This written consent must be delivered at the place and within the time appointed for the delivery of nomination papers. In this matter, special provisions apply in the case of nominations at elections to casual vacancies (c). [500]

Nomination papers must be delivered by 5 p.m. on the 12th day before the day of election of county councillors, or by 5 p.m. on the 8th day before the day of election of borough councillors (d). In the former case, the papers must be delivered at the town clerk's office if the county councillor will represent the whole or part of a borough, or at some place appointed by the returning officer in the case of any other kind of electoral division. At an election of borough councillors nomination papers must be delivered at the town clerk's office (e). Delivery need not be made personally by the candidate, proposer or seconder, and it seems that the Post Office is a sufficient agent. [501]

As soon as may be after the time for the delivery of nomination papers has expired, the returning officer, in the case of an election of county councillors, or the mayor, in the case of an election of borough councillors, must examine the nomination papers, and decide whether the candidates have been validly nominated in accordance with the provisions of the Second Schedule to the Act of 1933 (f). The mayor, if he is himself a candidate for election as a councillor, must not act. In such a case his place is taken by the deputy mayor, or, if there be no deputy mayor, or if that person is for any reason unable to act, by an alderman chosen by the borough council (g).

A returning officer or mayor has no power to decide that a candidate is disqualified for election (h). His functions are limited to objections arising on the face of a nomination paper, e.g. that it is not in the pre-

(c) L.G.A., 1933, Sched. II., Part I., para. 3, proviso ; 26 Statutes 475.

(d) *Ibid.*, Sched. II., Part II. ; *ibid.*, 479.

(e) *Ibid.*, Sched. II., Part I., para. 4 ; *ibid.*, 476.

(f) *Ibid.*, para. 5 (1).

(g) *Ibid.*, para. 10.

(h) *Pritchard v. Bangor Corpn.* (1888), 13 App. Cas. 241 ; 20 Digest 123, 999 ;

*R. v. Morton*, [1892] 1 Q. B. 39 ; 20 Digest 138, 1129.

scribed form, or that the nominators are not registered local government electors (i). [502]

Where the returning officer or the mayor, as the case may be, decides that a candidate has been thus validly nominated, his decision is final and cannot be questioned in any proceeding whatsoever (k). Other objections with which the returning officer is not concerned may, of course, be raised by election petition. Where the returning officer or the mayor, as the case may be, decides that a candidate has not been thus validly nominated, he endorses and signs on the nomination paper the fact and reasons for his decision, but this decision of the returning officer or mayor in this latter matter is subject to election petition (l). Where a decision has to be made by the returning officer or mayor regarding nomination papers, notice of the decision must be sent to each candidate at his place of residence as stated on his nomination paper not later than 5 p.m. on the 11th day before the day of election in an election of county councillors, or the 7th day before the day of election in an election of borough councillors (m). By the same date and time, the returning officer or mayor, as may be, must prepare a statement in the form prescribed by the Election Forms Regulations of 1934, giving particulars of all persons nominated, and indicating whether those persons have or have not been validly nominated, and must publish the statement by causing it to be affixed to the place appointed (see *ante*, p. 241) for the delivery of nomination papers (n). [503]

**Withdrawal of Candidature.**—A candidate may withdraw from his candidature by notice of withdrawal signed by him and attested by one witness and delivered at the place appointed (see *ante*, p. 241) for delivery of nomination papers (o). This notice must be delivered by 5 p.m. on the 9th day before the day of election in an election of county councillors, or 2 p.m. on the 6th day before the day of election in an election of borough councillors (p). [504]

**Plural Nominations.**—A candidate who is validly nominated for more than one electoral division of a county or for more than one ward of a borough must, by notice signed, attested, and delivered as aforesaid, withdraw from his candidature in all those electoral divisions or wards, as the case may be, except one, and if he does not so withdraw he shall be deemed to have withdrawn from his candidature in all those electoral divisions or wards, as the case may be (q). This is intended to prevent frivolous candidatures. [505]

**Uncontested Elections.**—If no more persons are nominated than the number of vacancies to be filled, those persons who have been nominated are deemed to be elected. In such a case, the returning officer must, not later than 11 a.m. on the day of election, publish the name or names of the person or persons elected and, if the election is that of a county councillor, the returning officer must then forthwith send the name of

(i) See *Howes v. Turner* (1876), 1 C. P. D. 670; 20 Digest 127, 1015; *Monks v. Jackson* (1876), 1 C. P. D. 683; 20 Digest 127, 1017.

(k) L.G.A., 1933, Sched. II, Part I., para. 5 (2); 26 Statutes 476.

(l) *Ibid.*, para. 5 (3), (4).

(m) L.G.A., 1933, Sched. II., Part II.; 26 Statutes 479.

(n) *Ibid.*, Sched. II., Part I., para. 6; *ibid.*, 476.

(o) *Ibid.*, para. 7.

(p) *Ibid.*, Sched. II., Part II.; 26 Statutes 479.

(q) *Ibid.*, Sched. II., Part I., para. 8; *ibid.*, 477.

the person elected to the county returning officer who must return the name to the clerk of the county council (*r*). In the case of borough councillors the returning officer must return the names of the persons elected to the town clerk. **[506]**

If at an ordinary election of county councillors, *i.e.* one not occasioned by a casual vacancy, no person is validly nominated, then the retiring county councillor is deemed to be re-elected (*r*). In the case of borough council elections, if the number of persons remaining validly nominated is less than the number of vacancies, the persons so nominated are deemed to be elected, and if the election is an ordinary election such of the retiring councillors of the borough or ward, as the case may be, as were highest on the poll at the last ordinary election, or as filled the places of councillors who were highest on the poll at that election, or, if the poll was equal or there was no poll, as may be determined by the drawing of lots conducted under the direction of the mayor, are deemed to be re-elected to make up the required number (*r*). When a retiring councillor is deemed to be re-elected in default of valid nominations as described above, no opportunity for consent to nomination arises as he is not nominated, but he may resign under sect. 62 of the Act (*s*) or may refrain from accepting office under sect. 61 (*t*) in either of which cases a casual vacancy will arise.

If after the latest time for delivery of nomination papers and before the commencement of the poll a candidate who remains validly nominated dies, the returning officer must, upon being satisfied of the fact of death, countermand the poll, and give notice (*u*). **[507]**

**The Poll.**—At every contested election of county or borough councillors the votes must be given by ballot, and the poll must be conducted in accordance with the Second Schedule to the L.G.A., 1933 (*a*). **[508]**

**Notice of Poll.**—On or before the 5th day before the day of election, the returning officer must, under para. 2 of Part III. of the Second Schedule, give notice of the poll and this notice must specify: (a) the day and hours fixed for the poll; (b) the number of councillors to be elected; (c) the full name, place of residence, and description of each candidate remaining validly nominated; (d) the names of the proposer and seconder who signed the nomination paper of each candidate; (e) a description of the polling districts (if any); and (f) the situation of each polling station and the description of the persons entitled to vote thereat.

For this and other purposes the first valid nomination paper delivered at the place appointed for the delivery of nomination papers in respect of a candidate is deemed to be the nomination paper of that candidate. This notice must be published at the places at which the notice of election is required to be published. See *ante*, p. 240. **[509]**

**Provision of Polling Stations and Places for Counting Votes.**—In the case of an election of a county councillor the returning officer, and in the case of an election of councillors of a borough the mayor, must

(*r*) L.G.A., 1933, Sched. II., Part I., para. 9; 26 Statutes 477.

(*s*) 26 Statutes 338.

(*t*) *Ibid.*, 337.

(*u*) L.G.A., 1933, s. 72 (1) and Sched. II., Part III., para. 6; 26 Statutes 344, 480.

(*a*) *Ibid.*, Sched. II., Part III., para. 1.

provide a sufficient number of polling stations for the electors, and allot the electors to the polling stations in such manner as he thinks most convenient, and furnish each polling station with such number of compartments as may be necessary in which the electors can mark their votes screened from observation (b). [510]

The returning officer may use under para. 4 of Part III. of the Second Schedule (c), free of charge, for the purpose of taking the poll or of counting the votes : (1) a room in a school in receipt of a grant, or in respect of which a grant is made, out of moneys provided by Parliament, from or by the Board of Education ; and (2) a room the expense of maintaining which is payable out of any rate.

But he must make good any damage done to, and defray any expense incurred by the persons having control over, any such room as aforesaid by reason of its being used for the purpose of taking the poll or of counting the votes. The use of a room in an unoccupied house for the purpose of taking the poll or of counting the votes does not render a person liable to be rated or to pay any rate for that house (c).

An election must not be held in a church, chapel or other place of public worship (d).

One or more polling stations may be provided in the same room (e). [511]

**Appointment of Presiding and other Officers.**—In the case of an election of a county councillor the returning officer, and in the case of an election of councillors of a borough the mayor, must appoint a presiding officer to preside at each polling station, and such other officers (including poll clerks) as may be necessary for taking the poll and counting the votes (f).

A verbal appointment seems to be sufficient, but a written appointment is usual and preferable. A suitable form for the presiding officer is that “the returning officer hereby appoints A.B. of — to preside at the polling station — for the purpose of taking the poll at the election, and to exercise and perform all the powers and duties of a presiding officer at such polling station.” It may also contain a few words for the formal acceptance of the appointment by the presiding officer. A form on similar lines can be used for the poll clerk, appointing “C.D. of — to act as clerk at the polling station at — for the purpose of the election.” The appointments must be brought to the polling station by the presiding officer and the poll clerks as the authority for their attendance. [512]

**Qualifications of Presiding Officers and Poll Clerks.**—Any person, man or woman, may act as a presiding officer whom the returning officer considers to be competent to perform the duties. However, no person is eligible for appointment who has been employed by or on behalf of a candidate in or about the election (g). A presiding officer must be well acquainted with his duties, must be alert and judicious, and must be of full age. He must not act as a polling or counting agent for any candidate at the election, nor can his partner or clerk. Any one doing so is guilty of a misdemeanor (h).

(b) L.G.A., 1933, Sched. II., Part III., para. 7 ; 26 Statutes 480.

(c) 26 Statutes 480.

(d) L.G.A., 1933, Sched. II., Part III., para. 5 ; 26 Statutes 480.

(e) *Ibid.*, para. 8.

(g) *Ibid.*, para. 49.

(f) *Ibid.*, para. 7.

(h) *Ibid.*, para. 48.

Any competent person, man or woman, may act as a poll clerk. He or she need not be of full age, but otherwise the same qualifications and restrictions apply to the poll clerk as to the presiding officer. [513]

The returning officer may, if he thinks fit, preside at a polling station, and the general provisions of Part III. of the Second Schedule relating to a presiding officer apply to a returning officer so presiding with the necessary modifications as to things to be done by the returning officer to the presiding officer, or by the presiding officer to the returning officer (i). [514]

**Duties and Powers of Presiding Officers.**—These will be apparent when the procedure at the poll is described, but several of the more general duties may be noted. A presiding officer is in effect a deputy returning officer at the polling station, and as such has control of the arrangements and proceedings.

It is the duty of the presiding officer to keep order at the station. This duty includes the power of ordering the removal of any one causing disorder, and of keeping him out. The presiding officer is bound to exercise his powers to secure order. He should take all necessary steps to secure that proceedings shall be taken in proper cases against persons committing, or suspected of committing, or of attempting to commit, offences in his polling station. In graver cases of riot or open violence he may, if necessary, call in the aid of the police, and may adjourn the poll, but must not close it (k). [515]

The presiding officer may delegate to any of the officers appointed to assist him, any act which he is required or authorised to do at his polling station, except ordering the arrest, exclusion, or removal of any person from the polling station (l).

The presiding officer's chief duty is to exercise supervision, and not to immerse himself in details unless necessary. He may leave the station if reasonably necessary, as, for instance, for requisite refreshment, or to vote. It is very inadvisable for any absence from the polling station to be other than brief, for he cannot delegate to a polling clerk all his functions. There is thus a chance that, if absent, his presence may be required for the purpose of ordering the arrest, exclusion or removal of a person, and mischief may consequently arise from disorder which the poll clerk is unable to quell, and the presiding officer become liable to a candidate or elector thereby prejudiced. [516]

**Liabilities of Presiding Officers.**—The general liabilities of the presiding officer are: (1) He is liable to the party aggrieved for any breach of duty, though, his duties being ministerial, malice need not be alleged. (2) Offences with respect to ballot papers and ballot boxes committed by him are misdemeanors, punishable by imprisonment for two years (m). (3) He is liable to imprisonment for 6 months for infringing the secrecy of the ballot (n). (4) To punishment as for a misdemeanor for acting as a polling or counting agent for any candidate (o).

(i) L.G.A., 1933, Sched. II., Part III., para. 47; 26 Statutes 490.

(k) *Ibid.*, para. 25; 26 Statutes 485; Parliamentary Elections Act, 1835, s. 8; Ballot Act, 1872, s. 10; 7 Statutes 383, 432.

(l) L.G.A., 1933, Sched. II., Part III., para. 50; 26 Statutes 491.

(m) *Ibid.*, s. 81; *ibid.*, 349.

(n) *Ibid.*, Sched. II., Part III., para. 54; *ibid.*, 491.

(o) *Ibid.*, para. 48.

The presiding officer is not, however, liable for the wrongful acts of the poll clerks, as they are not appointed by him. [517]

**Duties, Powers and Liabilities of a Poll Clerk.**—His duties are to assist the presiding officer in taking the poll, and to obey the lawful orders of the presiding officer. His powers are such of the powers of the presiding officer as may be assigned to him by the presiding officer, except the power of ordering the arrest, or exclusion, or removal from the polling station of any person (*p*). His liabilities for acts performed by him are similar to those of the presiding officer. [518]

**Declaration of Secrecy.**—Every returning officer, and every officer, polling agent or counting agent, authorised to attend at a polling station or at the counting of the votes, must, before the opening of the poll, or, in the case of an agent appointed after the opening of the poll, before acting as such agent, make a declaration of secrecy (*q*).

In the case of a returning officer the declaration must be made in the presence of a J.P., and in the case of any other officer or of an agent, the declaration must be made either in the presence of a J.P. or of the returning officer. [519]

These declarations are generally made at a meeting of all persons concerned, convened by the returning or deputy returning officer at some time during the day before the election, at which advice is given to and questions asked by the presiding and other officers concerned. [520]

Every returning officer, and every officer, polling agent or counting agent in attendance at a polling station or at the counting of the votes, must maintain and aid in maintaining secrecy of the voting (*r*).

No person having undertaken to assist a blind elector to vote may communicate at any time to any person any information as to the candidate for whom that elector intends to vote or has voted, or as to the number on the back of the ballot paper given for the use of that elector (*r*). [521]

**Polling Day.**—At 8 a.m. on the day named in the notice of poll, the poll commences, and all polling stations must open at that time and remain open without intermission until 8 p.m. on the same day and no longer (*s*).

In practice, of course, the presiding officer and poll clerks must be at the polling station some time, at least 15 minutes, before 8 o'clock, in order to attend to the opening of the station, the posting of notices, and other arrangements. [522]

**Furnishing of Polling Stations.**—In the case of an election of a county councillor the returning officer, and in the case of an election of councillors of a borough the mayor, must furnish each presiding officer with such number of ballot boxes and ballot papers, as in the opinion of the returning officer or the mayor, as the case may be, may be necessary; and provide each polling station with materials to enable electors to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of electors for the electoral

(*p*) L.G.A., 1933, Sched. II., Part III., para. 50; 26 Statutes 491

(*q*) *Ibid.*, para. 54. For the form of declaration, see Form C in Part IV. of the Second Schedule; 26 Statutes 494.

(*r*) L.G.A., 1933, Sched. II., Part III., para. 54; 26 Statutes 491.

(*s*) *Ibid.*, para. 3.

division, borough or ward, as the case may be, or such part thereof as contains the names of the electors allotted to vote at the station ; and do such other acts and things as may be necessary for effectually conducting the election (t). [523]

**Ballot Boxes, Papers and Official Mark.**—Every ballot box must be so constructed that the ballot papers can be put therein but cannot be withdrawn therefrom, without the box being unlocked (u).

The prescribed form of ballot paper will be found in Form A in Part IV. of the Second Schedule to the Act (a) where directions are also given as to the manner in which the ballot paper is to be printed and prepared.

For the purpose of guarding against a forgery of voting papers, before a paper is handed to a voter an official mark is affixed to it by the presiding officer. The mark may either be embossed or perforated (b). This mark must be kept secret, and an interval of not less than seven years must intervene between the use of the same official mark at elections for the same county or borough, as the case may be (c). [524]

Immediately before the commencement of the poll, the presiding officer must show the ballot box empty to such persons, if any, as may be present in the polling station, so that they may see that it is empty, and must then lock it up and place his seal upon it in such manner as to prevent it being opened without breaking the seal, and place it in his view for the receipt of ballot papers, and keep it so locked and sealed (d). [525]

**Persons in Polling Station.**—No person may be admitted to vote at any polling station except at the one allotted to him. The presiding officer must regulate the number of electors to be admitted to the polling station at the same time, and must exclude all other persons except the candidates, the polling agents, the officers appointed by the returning officer, the police officers on duty, and any person accompanying a blind elector for the purpose of assisting him to vote (e). [526]

**Questions to Voters.**—The inquiries which may be addressed to a voter are restricted to two questions, either or both of which may be put by the presiding officer, and must be put if he is required to do so by two local government electors or by a candidate or his polling agent (f).

The first question is whether the voter is identical with a given elector registered in the register of local government electors in force. At an election of a county councillor, the second question is whether the voter has already voted at the election of a county councillor for the electoral division, and adding, if the election is an ordinary election or a first election of an additional councillor, “ or for any other electoral division of the county ? ” If borough councillors are being elected the second question is whether the voter has already voted at the election, and adding, if elections for several wards are being held, “ in this or any other ward.”

(t) L.G.A., 1933, Sched. II., Part III., para. 7 ; 26 Statutes 480.

(u) *Ibid.*, para. 10.

(a) 26 Statutes 493.

(b) L.G.A., 1933, Sched. II., Part III., para. 18 ; 26 Statutes 483.

(c) *Ibid.*, para. 12.

(d) *Ibid.*, para. 15.

(e) *Ibid.*, para. 14.

(f) *Ibid.*, para. 16 (1).

A ballot paper must not be delivered to any person required to answer the above questions, or either of them, unless he has answered the question or questions satisfactorily (g). [527]

If at the time a person applies for a ballot paper, or after he has applied for a ballot paper and before he has left the polling station, a polling agent declares to the presiding officer that he has reasonable cause to believe that the applicant has committed an offence of personation, and undertakes to substantiate the charge in a court of law, the presiding officer may order a police officer to arrest the applicant, and the order of the presiding officer is a sufficient authority for the police officer so to do (h). A person against whom such a declaration is made by a polling agent must not be prevented from voting, but the presiding officer is to cause the words "protested against for personation" to be placed against his name in the marked copy of the register of electors (i). A person thus arrested is to be dealt with as a person taken into custody by a police officer for an offence without a warrant (k). [528]

**Marking Ballot Papers.**—A ballot paper must be delivered to each elector who verbally applies for one, and immediately before delivery it must be marked with the official mark (l), preferably in the top left-hand corner. The number, name and description of the elector as stated in the register must be called out in order that the persons present may know who is claiming a ballot paper; and the number of the elector is marked on the counterfoil of the ballot paper, together with the distinctive letter of the polling district; and a mark made in the register of electors against the number of the elector to show that he has received a ballot paper (l). If there is time, the ballot paper should be folded in four by the officer before it is handed to the elector.

The elector must then forthwith proceed to one of the compartments in the station, place his mark against the person or persons for whom he wishes to vote, fold up the paper, and place it in the ballot box, without conferring with any person or showing the contents of his paper to any person; but the presiding officer must see the official mark on the ballot paper before it goes into the ballot box (m). [529]

**Inability of Elector to Vote.**—Where an elector cannot vote in the ordinary way through blindness or some other physical cause, or is unable to read (n), or if the day of poll is a Saturday and the elector a Jew or Jewess, the presiding officer must, in the presence of the polling agents, cause the vote of the elector to be recorded as the elector wishes, and the ballot paper to be placed in the ballot box (o). The name and number of each of such persons must be entered on a "list of votes marked by the presiding officer." [530]

(g) L.G.A., 1933, Sched. II., Part III., para. 16 (2); 26 Statutes 483.

(h) *Ibid.*, para. 17 (1).

(i) *Ibid.*, para. 17 (2).

(k) As to the offence of personation, see title CORRUPT AND ILLEGAL PRACTICES.

(l) L.G.A., 1933, Sched. II., Part III., para. 18; 26 Statutes 483.

(m) *Ibid.*, para. 19.

(n) In which case the presiding officer must complete a form based on Form D of Part IV. of the Second Schedule to L.G.A., 1933; 26 Statutes 494.

(o) L.G.A., 1933, Sched. II., Part III., para. 20; 26 Statutes 484.

Alternatively it is open to an elector who is incapacitated through blindness, to vote by another person who is either qualified to vote at that election, or who is the father, mother, brother, sister, husband, wife, son, or daughter of the blind elector, and has attained the age of 21 years, and accompanies him to the poll (*p*). This companion must sign a written declaration (*q*) that he is qualified as above-mentioned and that he has not assisted more than one other blind person at the same election. The name and number of the blind person, and the name and address of the companion must be entered by the presiding officer in a "list of blind electors assisted by companions." Each declaration must be retained by the presiding officer and attested by him. No fee, stamp or other payment may be charged in respect of such declarations (*r*). [531]

**Tendered Ballot Papers.**—If a person representing himself to be a particular elector named on the register, applies for a ballot paper, after another person has voted as such elector, the presiding officer, upon this person's satisfactorily answering the two questions indicated on p. 247, *ante*, must hand him a "tendered ballot paper," of a different colour (usually pink) to that of an ordinary ballot paper, upon which the person may record a vote. Thereupon the presiding officer must take the paper, endorse it with the name and number of the elector and set it aside in a separate packet. The name and number of the applicant, and the distinctive letter of the polling district, must be entered also in the "tendered votes list" (*s*).

The tendering is *prima facie* evidence that personation has previously been committed, and on a scrutiny on an election petition the vote of the person personating will be struck off and the tendered vote added, though evidence may be brought to rebut the presumption of personation (*t*). The paper is void if put into the ballot box (*a*), and these tendered votes are not included on the counting of the votes. [532]

**Spoilt Ballot Papers.**—An elector who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper may, on delivering it to the presiding officer and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up and the spoilt ballot paper must be immediately cancelled (*b*). [533]

**Adjournment of Poll by Presiding Officer.**—Where the proceedings at the poll are obstructed by riot or open violence, the presiding officer must not close the poll, but must adjourn it at that station until the

(*p*) L.G.A., 1933, Sched. II., Part III.; para. 21; 26 Statutes 484.

(*q*) This declaration is set out as Form E in Sched. II., Part IV. of L.G.A., 1933; 26 Statutes 494.

(*r*) L.G.A., 1933, Sched. II., Part III., para. 22; 26 Statutes 485.

(*s*) *Ibid.*, para. 23.

(*t*) *Oldham Case* (1869), 1 O'M. & H. 152; *St. Andrew's Case* (1886), 4 O'M. & H. 32.

(*a*) *York (County) East Riding, Buckrose Case* (1886), 4 O'M. & H. 115; 20 Digest 108, 879.

(*b*) L.G.A., 1933, Sched. II., Part III., para. 24; 26 Statutes 485.

following day, or until later if necessary (c). Where a poll has so to be adjourned, the presiding officer must give notice thereof to the returning officer who must not finally declare the state of the poll, or make known the names of any person elected, until such poll is finally completed and the papers and documents delivered to the returning officer. This does not, however, authorise a poll to be held on Sunday, Good Friday or Christmas Day (d).

The presiding officer must first attempt to restore order by means of his ordinary powers, *i.e.* by ordering persons misconducting themselves in the station to be removed by a police officer. [534]

**Close of Poll.**—The poll must be kept open until the appointed hour. The presiding officer must close the doors of the polling station punctually at the appointed time.

No intending elector may be admitted after the appointed time, and ballot papers must not be given out, nor any votes received, after that time, except that electors who have been admitted to the polling station before the closing time, and have applied for and received ballot papers before that time, may record their votes and deposit their ballot papers in the ballot box after the appointed time for closing (e). Votes given otherwise after the proper time for closing the poll are void, and will be struck off on a scrutiny (e). [535]

**Duties of Presiding Officer at Close of Poll.**—As soon as practicable after the close of the poll, the presiding officer must, in the presence of the polling agents, make up into separate packets, sealed with his own seal and the seals of such polling agents as desire to affix their seals, and deliver to the returning officer to be taken charge of by him : (1) each ballot box in use at his station, sealed so as to prevent the introduction of additional ballot papers and unopened, but with the key attached ; (2) the unused and spoilt ballot papers, placed together ; (3) the tendered ballot papers ; (4) the marked copies of the register of the electors and the counterfoils of the ballot papers ; (5) the tendered votes list, the list of blind electors assisted by companions, the list of votes marked by the presiding officer, a statement of the number of electors whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," the declarations made by the companions of blind electors, and the declarations of inability to read (f).

These packets must be accompanied by a statement known as a "ballot paper account" made by the presiding officer showing the number of ballot papers entrusted to him, and accounting for them under three heads : "Ballot Papers in the Ballot Box"; "Unused and Spoilt Ballot Papers"; and "Tendered Ballot Papers" (g).

He must then proceed to the place where the count is to take place, at which the returning officer will be, and hand to him all the papers, documents, etc., properly filled in or otherwise dealt with, including the ballot box. [536]

(c) Parliamentary Elections Act, 1835, s. 8 ; Ballot Act, 1872, s. 10 ; 7 Statutes 883, 432 ; L.G.A., 1933, Sched. II., Part III., para. 25 ; 26 Statutes 485.

(d) *Ibid.*

(e) *Islinton West Division Case, Medhurst v. Lough and Gasquet* (1901), 17 T. L. R. 210, 230 ; 5 O'M. & H. 120 ; 20 Digest 104, 837.

(f) L.G.A., 1933, Sched. II., Part III., para. 26 ; 26 Statutes 485.

(g) *Ibid.*, para. 27.

**The Count.** *Counting Agents.*—Each candidate may appoint counting agents to attend at the counting of the votes (*h*). Notice in writing of every appointment, stating the name and address of the person appointed, must be given by the candidate to the returning officer two clear days at least before the opening of the poll (*i*). The returning officer may refuse to admit to the counting place any counting agent whose name and address has not been so given.

If a counting agent dies, or becomes incapable of acting, the candidate may appoint another counting agent in his place, but must forthwith give to the returning officer notice in writing of the name and address of the counting agent so appointed (*k*).

Arrangements are to be made by the returning officer for counting the votes in the presence of the counting agents, as soon as practicable after the close of the poll (*l*). He must give the agents notice in writing of the time and place at which he will begin to count the votes. [537]

*Persons at the Count.*—Except with the consent of the returning officer, no person other than the returning officer, the persons appointed to assist him, and the candidates and their counting agents may be present at the counting of the votes (*m*). [538]

*Procedure at the Count.*—Before the returning officer proceeds to count the votes, he must, in the presence of the counting agents, open each ballot box, count and record the number of ballot papers, and mix together the whole of the ballot papers (*n*).

It is the duty of the returning officer, while counting and recording the number of the ballot papers and counting the votes, to keep the ballot papers face upwards, and to prevent the numbers on the back being seen by any person (*o*).

The count must, so far as practicable, be proceeded with continuously, allowing only time for refreshment, and excluding (except so far as he may, with the concurrence of the counting agents, if any, otherwise determine) the hours between 8 p.m. and 9 a.m. on the succeeding morning (*p*). During the excluded time, the returning officer must place the ballot papers and other documents relating to the election under his own seal and the seals of such of the counting agents as desire to affix their seals, and otherwise take proper precautions for the security of the papers and documents (*q*). [539]

*Void Ballot Papers.*—Any ballot paper (*1*) which does not bear the official mark, or (*2*) on which votes are given for more candidates than the elector is entitled to vote for, or (*3*) on which anything is written or marked by which the elector can be identified except the printed number on the back, or (*4*) which is unmarked or void for uncertainty, must not be counted (*r*).

But where at an election an elector is entitled to vote for more than one candidate, the ballot paper is not to be void as regards any vote as to which no uncertainty arises, and that vote must be counted.

The official mark on the paper need not be perfect (*s*). The presence

(*h*) L.G.A., 1933, Sched. II., Part III., para. 28 (*1*); 26 Statutes 486.

(*i*) *Ibid.*, para. 28 (*2*).

(*k*) *Ibid.*, para. 28 (*3*).

(*l*) *Ibid.*, para. 29.

(*m*) *Ibid.*, para. 30.

(*n*) *Ibid.*, para. 31.

(*o*) *Ibid.*, para. 32.

(*p*) *Ibid.*, para. 33.

(*q*) *Ibid.*, para. 33.

(*r*) *Ibid.*, para. 34.

(*s*) *In re Thornbury Division of Gloucestershire* (1886), 16 Q. B. D. 739; 20 Digest 109, 885; *Wigtown Case* (1874), 2 O'M. & H. 216; *Gloucester (County), Cirencester Case* (1893), 4 O'M. & H. 195; 20 Digest 110, 890.

of additional marks is immaterial, provided that it is clear that the voter did not intend to vote for too many candidates. An example of this occurred where a mistake had been made and an attempt made to erase a cross (*t*). The mere fact that a mark might possibly identify the voter is not enough ; he must definitely be capable of identification. For instance, a cross made badly is insufficient to avoid a vote (*u*).

Evidence, however, may be tendered to show that there was an arrangement between the voter and an agent or other person by which the voter was to make his mark in a particular way (*a*). [540]

The general principle as to certainty is : that any marks are valid which clearly show an intention to vote for the legal number of candidates ; and that if there are some valid marks it is immaterial that there are other marks on the paper, provided that they do not render the paper void by reason of identification.

In the case of void voting papers, the returning officer must endorse the word " rejected " thereon, and in the case of papers which contain marks, some of which are certain, some uncertain, the words " rejected in part " with a memorandum of the votes which have been counted (*b*). The words " rejection objected to " must also be endorsed if a counting agent makes objection to the rejection of a paper or vote (*c*). [541]

A statement must also be drawn up by the returning officer showing the number of ballot papers rejected, including those rejected in part, under the several heads of (1) want of official mark ; (2) voting for more candidates than entitled to ; (3) writing or mark by which elector could be identified ; (4) unmarked or wholly void for uncertainty ; (5) rejected in part ; and the returning officer must, on request, allow any counting agent to copy the statement (*d*).

The decision of the returning officer on any question arising on a ballot paper is final, subject only to a review by the election court on an election petition (*e*). [542]

*Sealing of Ballot Papers, etc.*—On the completion of the count, the returning officer must seal up in separate packets the counted and rejected ballot papers, including those rejected in part (*f*). Without opening any sealed packet of tendered ballot papers or marked copy of a register and counterfoils, he must then proceed, in the presence of the counting agents, to verify the ballot paper account of each presiding officer with the number recorded by the returning officer, before the papers are mixed together, and the unused and spoilt ballot papers in his possession, and the tendered votes list (*g*). Each packet must then be resealed. This is a safeguard against a ballot box having been mislaid, and the papers contained in it omitted from the count. [543]

**Equality of Votes.**—If there is an equality of votes, and one more vote would be sufficient to elect any candidate, the returning officer may give a casting vote by word of mouth or in writing, whether or not he is an elector (*h*). It is not incumbent upon him to give a casting vote in such a case, and if he does not do so, the election is void as

(*t*) *Birmingham Case, Woodward v. Sarsons* (1875), L.R. 10 C.P. 733 ; 20 Digest 111, 892 ; and *Gloucester (County), Cirencester Case* (1893), 4 O.M. & H. 195 ; 20 Digest 110, 890.

(*u*) *Exeter Case* (1911), 6 O.M. & H. 232 ; 20 Digest 111, 891.

(*a*) *Wigtown Case* (1874), 2 O.M. & H. 215. See, further, Parker on Elections, 4th ed., 370—80.

(*b*) L.G.A., 1933, Sched. II., Part III., para. 35 (1) ; 26 Statutes 487.

(*c*) *Ibid.*, para. 35 (2).

(*d*) *Ibid.*, para. 35 (3).

(*e*) *Ibid.*, para. 36.

(*f*) *Ibid.*, para. 39 ; 26 Statutes 488.

(*g*) *Ibid.*, para. 39.

(*h*) *Ibid.*, para. 37.

regards the candidates who have tied, and a new election must be held under sect. 72 (2) of the Act (i). [544]

**Declaration of Result.**—Upon the result being ascertained, the returning officer must immediately declare the successful candidate or candidates to be elected, and as soon as possible afterwards must publish the names of the candidates elected and the number of votes recorded in favour of each candidate, whether or not elected (k). The returning officer must also, as soon as possible, return the names of the persons elected as county councillors to the county returning officer, or as borough councillors to the town clerk. If the election is of county councillors, the county returning officer must in his turn furnish the clerk of the county council with such names (l). [545]

**Transmission of Documents.**—The returning officer must, after the election, forward to the clerk of the county council, or town clerk, as the case may be, all the packets of ballot papers in his possession, together with all statements, ballot paper accounts, tendered votes lists, lists of blind electors assisted by companions, lists of votes marked by the presiding officer, statements relating thereto, declarations made by the companions of blind electors, declarations of inability to read, packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the electoral division, borough or ward for which the election was held (l). [546]

**Production of Election Documents in Court.**—Where it is found necessary, upon a prosecution for an offence in relation to ballot papers, or upon an election petition, to inspect or produce any rejected or counted ballot papers or to open a sealed packet of counterfoils, a county court judge having jurisdiction in the county or borough concerned may make an order for the inspection or production of such ballot papers, or for the opening of such sealed packet of counterfoils (m). The order may be made subject to such conditions as to persons, time, place and mode of inspection or production of ballot papers or of opening the sealed packet of counterfoils as the court may think expedient, and may direct the clerk of the county council or the town clerk, as the case may be, having custody of the ballot papers and the sealed packet of counterfoils to retain them intact for such periods as may be specified in the order (m).

The order may be made by a county court judge otherwise than in open court. An appeal from such an order lies to the High Court. In making or carrying into effect such an order, care must be taken to keep secret all votes which are valid (m).

No person may inspect or open the above-mentioned documents unless and until he has an order from a court (n). [547]

**Retention of Election Documents.**—The clerk of the county council or town clerk, as the case may be, must retain for six months among the records of the county or borough all documents relative to an election forwarded to him by the returning officer, and then, unless a county court order as above described is in force, must have them destroyed (o).

(i) 26 Statutes 344.

(k) L.G.A., 1933, Sched. II., Part. III., para. 38; 26 Statutes 488.

(l) *Ibid.*, para. 40.

(m) *Ibid.*, para. 41.

(n) *Ibid.*, para. 42.

(o) *Ibid.*, para. 44.

During these six months, all such documents, except ballot papers and counterfoils, must be open to public inspection at such times and in such manner as may be determined by the council concerned, with the consent of the Secretary of State, and the clerk of the county council or town clerk must supply copies of or extracts from such documents on request, at such fees and subject to such conditions as may be determined by the council concerned with the consent of the Secretary of State (*p*).

Subject to these provisions, the clerk or town clerk is subject to the directions of his council in respect of the custody and destruction of ballot papers and other documents (*q*).    [548]

**Expenses.**—As to the limits imposed on the expenses of candidates at municipal and county council elections, see Vol. IV. at pp. 93—95.

All expenses properly incurred in holding an election of a county councillor, not exceeding such scale as may be fixed by the council, so far as the scale is applicable, are paid from the county fund (*r*). Before the poll is taken, the county council must, if the returning officer so requests, advance to him such sum as he may require, not exceeding £10 for every 1,000 electors at the election (*r*). All expenses properly incurred at a borough council election must be paid by the council (*s*).    [549]

#### ELECTION OF URBAN AND RURAL DISTRICT COUNCILLORS

**Introduction.**—As already explained (*t*), elections of district councillors are modelled on the procedure for elections of borough councillors enacted in the Second Schedule to the L.G.A., 1933, and sect. 40 of that Act (*u*) authorises the Secretary of State by his rules to make adaptations, alterations and exceptions in the provisions of the Second Schedule. Two codes of rules have been drawn up: (1) the Urban District Councillors Election Rules, 1934 (*a*); and (2) the Rural District Councillors Election Rules, 1934 (*b*). Both sets of rules came into force on June 1, 1934, and closely follow the Second Schedule to the Act of 1933, but instead of setting out the adaptations, etc., the more convenient plan has been adopted of reproducing the adapted text of the Act of 1933. The main differences are here noted.    [550]

**Returning Officer.**—See title RETURNING OFFICER.

**Day of Election.**—By rule 2, the day of election (*i.e.* the day on which the poll, if any, is to be taken), is at the ordinary election the first Monday in April, or, if that be Easter Monday, the last Monday in March, or in either case such other day not earlier than the preceding Saturday or later than the following Wednesday as may for special reasons be fixed by the county council.

In the case of a first election, the day of election must be not later than six weeks from the day upon which the order constituting the district became operative. It is usually fixed by the order constituting the new district.    [551]

**Joint Polls.**—In the Rural District Councillors Election Rules, an economy is made by rule 4 which requires that when elections of rural district councillors and of parish councillors are held on the same date

(*p*) L.G.A., 1933, Sched. II., Part III., para. 45.

(*q*) *Ibid.*, para. 46.

(*r*) L.G.A., 1933, s. 16; 26 Statutes 313.

(*s*) *Ibid.*, s. 30.

(*t*) *Ante*, p. 238.

(*u*) 26 Statutes 325.

(*a*) S.R. & O., 1934, No. 545.

(*b*) *Ibid.*, No. 546.

and for the same area, the polls are to be taken together. In such a case, one ballot box may be used for both elections; and if separate boxes are used, the fact that a ballot paper is put into the wrong box will not invalidate that vote (c).

Where a joint poll is taken, the total expenses are borne equally, as to one half as R.D.C. election expenses, as to the other as parish council election expenses; see rule 7 of the Rural District Councillors Election Rules, 1934, and rule 9 of the rules as to parish councillors.

**[552]**

**Notice of Election.**—The notice must be exhibited on or near the outer door of the offices (if any) of the council, and at such other places in the ward or other electoral area for which the election is held as may be deemed desirable (d). **[553]**

**Nomination of Candidates.**—The requirements as to the nomination of candidates are the same as those for borough council elections, except that no assent by eight electors is required in the case of nomination of candidates for a R.D.C. (e). **[554]**

**Withdrawal of Candidates.**—The time expires at 5 p.m., not at 2 p.m. as in a borough council election (f). **[555]**

**Hours of Poll.**—The poll is not necessarily open from 8 a.m. to 8 p.m. as in the case of borough and county elections, but is open during such hours as may be fixed by the county council by any general or special order, or if there be no such order, during such hours as were applicable at the last ordinary election. The poll must, however, always be open between the hours of 6 p.m. and 8 p.m. (g). **[556]**

**Polling Stations.**—There is a special provision in both sets of election rules that no premises for the sale of intoxicating liquor may be used for a polling station (h). **[557]**

**Ballot Papers.**—In an election of rural district councillors, if there is a parish council election proceeding at the same time at the same place, the ballot papers for each election must be of a different colour (i).

As to the official mark, the same rules apply thereto in district council elections as in borough and county elections, except that seven years need not elapse between the times when the same mark is used (k).

**[558]**

**Procedure at the Count.**—Where a joint election of parish and rural district councillors has been held, the returning officer must open one ballot box, and separate the voting papers of each election, placing them in separate packets (l). After this has been done to each ballot box, all the voting papers at one election must be mixed together and the votes counted, and then the same procedure carried out with the voting papers at the other election. **[559]**

(c) See also r. 4 (2) and r. 5 (2) of the Parish Councillors Provisional Election Rules, 1934, dated May 31, 1934, and still provisional.

(d) Sched. II., Part I., to the Urban and the Rural District Councillors Election Rules, repeating Sched. II., Part I., para. 1 (3) of the L.G.A., 1933.

(e) Rural District Councillors Election Rules, Sched. II., Part I., para. 2 (2).

(f) Sched. II., Part II., to both sets of Rules.

(g) Sched. II., Part III., para. 3, to both sets of Rules.

(h) Sched. II., Part III., para. 8.

(i) Rural District Councillors Election Rules, Sched. II., Part III., para. 11 (e).

(k) Sched. II., Part III., para. 12, of both Act and Rules.

(l) Rural District Councillors Election Rules, Sched. II., Part III., para. 31 (2).

**Retention of Election Documents.**—The time and manner in which election documents, other than ballot papers and counterfoils, relating to district council elections may be open to public inspection, are determined by the county council, and the consent of the Secretary of State is not required (*m*). [560]

**Forms.**—The forms of notice of election, nomination paper, and statement of persons nominated are prescribed in the Third Schedule to the Rules and are not governed by the County and Borough Election Forms Regulations, 1934 (*n*). [561]

**Expenses.**—No limit is imposed as to the expenses which may be incurred by a candidate at an election of district councillors, unlike the case of municipal and county council elections (see p. 93 of Vol. IV.).

All expenses properly incurred in relation to the holding of an election of district councillors, not exceeding such scale as may be fixed by the county council so far as the scale is applicable, are payable by the district council under sect. 40 (3) of L.G.A., 1933 (*o*). [562]

#### ELECTION OF PARISH COUNCILLORS

The number of parish councillors for each parish, or group of parishes, is such number, not being less than five nor more than fifteen, as may be fixed from time to time by the county council (*p*). The term of office of parish councillors is three years and they retire all together on April 15, 1937, and on April 15 in every third year thereafter, their places being filled by the newly elected councillors who come into office on that date (*p*). Parish councillors are elected at a parish meeting or at a poll consequent thereon (*q*). The rules which govern such election are contained in the Parish Councillors Election Rules, 1934 (*r*), and the First Schedule to these rules contains the provisions relating to the parish meeting for election of parish councillors and matters connected therewith. [563]

An alternative method of election applies in cases where the county council, at the request of the parish council or parish meeting, have by order directed that the parish councillors for a particular parish, or if the parish is divided into parish wards for the wards of that parish, shall cease to be elected at a parish meeting and shall be elected by means of nomination and, if necessary, a poll (*s*). Such an order may be revoked by the county council on application made by the council or parish meeting of the parish (*s*). In the event of such an order having been made by the county council, rule 8 of the Parish Councillors Election Rules, 1934, provides that Parts I. and II. of the Second Schedule to the L.G.A., 1933, shall apply to the election of parish councillors subject to the adaptations, alterations and exceptions set out in the Second Schedule to the Rules. Apart from the necessary adaptations making the provisions apply to the election of parish councillors there are no material differences between these provisions and the provisions previously referred to in connection with the codes of rules for the election of urban and rural district councillors. [564]

(*m*) Sched. II., Part III., para. 45 of both sets of Rules.

(*n*) S.R. & O., 1934, No. 544.

(*p*) L.G.A., 1933, s. 50 ; 26 Statutes 330.

(*r*) S.R. & O., 1934, No. 1318.

(*o*) 26 Statutes 325.

(*g*) *Ibid.*, s. 51 (1).

(*s*) L.G.A., 1933, s. 51.

**Day of Parish Meeting.**—If the election is the ordinary election, or one which can be held at the time of the ordinary election, Part II. of the First Schedule to the Election Rules requires the Parish Meeting to be held on the first Monday after March 10th, or if the first Monday in April is Easter Monday, the first Monday after March 3rd; or in either case on such other day not earlier than the preceding Saturday, or later than the following Wednesday, as for special reasons may be fixed by the county council (*t*).

**Day of Poll.**—If a poll has to be taken at an ordinary election or an election which can be held at the time of an ordinary election, rule 3 requires it to be held on the first Monday in April, or, if that is Easter Monday, the last Monday in March; or, in either case, such other day not being earlier than the preceding Saturday, or later than the following Wednesday, as may for special reasons be fixed by the county council (*t*). But in all cases the county council or the returning officer, as the case may be, must wherever practicable secure that the poll shall be taken on the same day as the poll at an election of rural district councillors for the same area. [565]

**Joint Poll.**—Rule 5 is a similar provision with regard to joint polls as that already mentioned in dealing with the Rural District Councillors Election Rules (see *ante*, pp. 254, 255). [566]

**Expenses.**—Where polls for the election of parish councillors and rural district councillors for the same area are taken together, one-half of any expenses which may be payable in respect of the two polls jointly, including the remuneration of any officers employed in the conduct thereof, must be deemed to have been incurred in relation to the poll for the election of parish councillors, and must be defrayed accordingly (Rule 9). [567]

The following is a summary of the provisions contained in the First Schedule to the Parish Councillors Election Rules, 1934, relating to the conduct of a parish meeting for the election of parish councillors and the proceedings in connection therewith. [568]

**Notice of Parish Meeting for Election.**—On or before the 7th day before the day of the parish meeting for the election, a notice of such meeting must be published in the form prescribed in the Third Schedule to the Rules. The notice must be prepared by the chairman of the parish council, and in the case of a first election by the chairman of the parish meeting for the parish. In either case it must be published by affixing it on or near the principal door of each church or chapel in the parish or parish ward and by posting it in some conspicuous place or places in the parish or parish ward, and in such other manner, if any, as appears to the chairman to be desirable for giving publicity to the notice (*u*). If the chairman is unable to act his duties must be performed by the clerk of the parish council, or if there is no such clerk, by the returning officer (*w*). [569]

(*t*) Special provision is made for elections not held at the time of the ordinary election.

(*u*) Sched. I., Part I., para. 1.

(*w*) *Ibid.*, para. 2.

**Nomination of Candidates.**—Nomination papers may be obtained from the clerk of the parish council and each paper must be signed by two local government electors for the parish or parish ward, as proposer and seconder. Otherwise the requirements are similar to those in respect of candidates for urban and rural district councils. [570]

**Delivery of Nomination Papers.**—Every nomination paper must be delivered at the meeting to the chairman of the meeting (para. 4). [571]

**Order of Business at Meeting.**—Business relating to the election must be the first business transacted at the meeting and must be completed without adjournment (para. 6). [572]

**Nomination Papers to be asked for by Chairman.**—The chairman of the meeting must ask at the meeting for nomination papers to be delivered to him and after their delivery must number them in the order in which they are received by him (para. 7). The first valid nomination paper received by him in respect of a candidate is to be deemed to be the nomination paper of that candidate.

If the chairman himself is nominated for election and does not forthwith withdraw his candidature, he must call upon the meeting to appoint some other person to take the chair (para. 8.) The chairman must examine nomination papers and decide as to whether the candidates have been validly nominated or not (para. 9). If he decides that the candidate has been validly nominated his decision is final. If, however, he decides that a candidate has not been validly nominated, he must endorse and sign on the nomination paper the fact and reasons for his decision and state the fact and reasons to the meeting, and his decision in that event will be subject to review on an election petition questioning the election (para. 9). [573]

**Statement as to Persons Nominated.**—When it appears to the chairman that all nomination papers have been handed in and not less than fifteen minutes have elapsed since he took the chair, he must state to the meeting, in the alphabetical order of the surnames of the candidates, the full name of each candidate and his place of residence and description and the names of his proposer and seconder (para. 10). No further nomination papers can be received after such statement except any which may be made as the result of withdrawal of a candidate. [574]

**Questions to Candidate.**—After making the statement as to persons nominated the chairman must give an opportunity for putting questions to such of the candidates as have been validly nominated and are present, and for receiving explanations from them (para. 11). [575]

**Withdrawal.**—Before nominations of the candidates are put to the meeting, or if the number of candidates remaining validly nominated is not more than the number of councillors to be elected, before the chairman declares the nominated candidates elected, any candidate may withdraw his candidature (para. 12). Any such withdrawal must be in writing signed by the candidate and must be handed to the chairman ; or if the candidate is present at the meeting, he may by word of mouth declare that he withdraws his candidature, and the chairman shall thereupon write "Candidature withdrawn" on the back of the nomination paper, and the candidate must sign his name or initials thereto. [576]

**Additional Nominations.**—If on account of any withdrawal the number of candidates becomes less than the number of councillors to be elected, the chairman must, if desired by any local government

elector present at the meeting, allow a reasonable time at the meeting during which further nomination papers may be handed in to him (para. 13), in which event the same procedure as to his decision with regard to the validity of nominations, his statement as to persons nominated and questions to candidates, as has been described above, must be followed.

If the number of candidates remaining validly nominated is not more than the number of councillors to be elected, those candidates are to be declared by the chairman to be elected (para. 14).

If, however, such number exceeds the number of councillors to be elected, the chairman must put separately to the meeting the names of these candidates in the alphabetical order of their surnames and must take the votes by show of hands in favour only of each candidate and count the votes so given for each candidate (para. 15). [577]

**Statement as to Result of Voting.**—As soon as the votes have been counted the chairman must state to the meeting the number of votes given for each candidate, declare to be elected the candidates (up to the number of councillors to be elected) to whom the majority of votes have been given, read to the meeting para. 18 of the Schedule (*infra*) relating to a demand for a poll, and ask whether a poll is demanded (para. 16). [578]

**Conclusion of Meeting.**—The meeting must not be concluded until at least five minutes after the chairman has asked whether a poll is demanded (para. 17). [579]

**Demand for Poll.**—Para. 18 is in the following terms : “ A demand may be made before the conclusion of the meeting for a poll to be taken as to which of the candidates whose names have been put to the meeting by the chairman shall be elected ; but a poll shall not be taken unless either the chairman consents or the poll is demanded by not less than five, or one-third, of the local government electors present at the meeting, whichever is the less.” [580]

**Withdrawal of Demand for Poll.**—A poll must not be taken if the demand for a poll is withdrawn before the conclusion of the meeting by all the persons who made it (para. 19).

The holding of a poll is left to the discretion of the chairman if the demand for a poll is withdrawn before the conclusion of the meeting by so many of the persons who made it that the residue of those persons is less than five, or is less than one-third of the local government electors who were present at the meeting when the demand was made, whichever is the less (*ibid.*). [581]

**If no Poll, Chairman's Declaration Final.**—If a poll has not to be taken, the declaration of the chairman as to the election of the candidates is to be final (para. 20). [582]

**If no Poll, Publication of Result of Election.**—If no poll is to be taken the chairman must, not later than the day after the meeting, publish a list of the persons whom he has declared to be elected (para. 21). [583]

**Preliminaries to Poll.**—If a poll is to be taken, the chairman must on the day after the meeting send by post or otherwise to each candidate whose name has been put to the meeting a notice stating that he has been nominated and that a poll has been demanded and giving the name and address of the returning officer (para. 22), and cause to be

delivered to the returning officer not later than four o'clock in the afternoon of the day next but one after the meeting :

- (i.) a report signed by him stating the names of the candidates in respect of whom the poll has to be taken, with the nomination paper of each candidate annexed thereto ;
- (ii.) the remainder of the nomination papers ;
- (iii.) a statement of the names of any candidates who were decided not to be validly nominated or whose candidatures were withdrawn at the meeting. [584]

**Withdrawal of Candidates after Meeting.**—If a poll is to be taken, a candidate may after the meeting withdraw from his candidature by notice of withdrawal signed by him and attested by one witness and delivered to the returning officer not later than 5 o'clock in the afternoon on the fourth day after the day of the parish meeting for the election ; and if by reason of any such withdrawal, the number of remaining candidates becomes equal to or less than the number of councillors to be elected, a poll must not be taken, but those candidates are to be deemed to be elected and the returning officer must certify the fact to the chairman of the meeting who must as early as possible publish a list of the persons elected and send a copy to each of them (para. 23). [585]

#### LONDON

**Introduction.**—The present law relating to the conduct of local government elections within the Metropolis is contained, as to the county council in sects. 40 and 75 of the L.G.A., 1888 (a), and as to metropolitan borough councils, in the Metropolitan Borough Councillors Election Rules, 1931 (b), as amended by subsequent rules made in 1933 (c) and 1934 (d).

This law is similar to that applicable in the provinces previous to the coming into operation of the L.G.A., 1933. The question of promulgating legislation in the near future in order to bring the law applicable to the metropolis into line with the Act of 1933 is under the consideration of the L.C.C., but at the present the law is still contained in the above-mentioned Act and Rules. [586]

**L.C.C.**—The number of councillors must be double the number of members which the parliamentary boroughs in the metropolis are for the time being authorised by law to return to serve in Parliament ; and each such borough, or if it is divided into divisions each division thereof, is an electoral division, and the number of councillors elected for each such electoral division is double the number of members of Parliament which such borough or division is for the time being entitled to return to serve in Parliament (e).

Sect. 75 of the L.G.A., 1888 (f), provides that, for the purpose of election of county councillors, Parts II., III., IV., sect. 124, Parts XII., and XIII., and the Second Schedule, Parts II. and III. of the Third Schedule and Part I. of the Eighth Schedule of the Municipal

(a) 10 Statutes 718, 746.

(b) S.R. & O., 1931, No. 22 ; made under L.G.A., 1894, and London Government Act, 1899.

(c) S.R. & O., 1933, No. 1127.

(d) *Ibid.*, 1934, No. 963.

(e) L.G.A., 1888, s. 40 (4), as amended by the Representation of the People Act, 1918, Sixth Schedule, para. 4; 7 Statutes 588.

(f) 10 Statutes 746.

Corporations Act, 1882 (g), and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (h), so far as they are unrepealed and consistent with the provisions of the L.G.A., 1888, shall apply with the necessary modifications and those indicated later in sect. 75. [587]

We will now consider the matters in which the election of county councillors in London differs from that of an extra-metropolitan county.

Part II. of the Third Schedule to the Municipal Corporations Act, 1882 (i), contains detailed rules as to nomination in elections of councillors. Nomination papers must be delivered to the returning officer or his deputy before five o'clock in the afternoon of the 7th day before the day of election (k). A written consent of the candidate to nomination is now required, unless such candidate is absent from the United Kingdom (l). The returning officer or his deputy must forthwith send notice of every nomination to each candidate (m).

The returning officer or deputy must attend at a place appointed by him within the borough on the day next after the last day for delivery of nomination papers (*supra*) for a sufficient time, between the hours of two and four in the afternoon, and must decide upon the validity of every objection made in writing to a nomination paper (n).

Each candidate and his representative, but no other person except for the purpose of assisting the returning officer or deputy, are entitled to attend the proceedings before the returning officer or deputy (o); and the representative may be any person appointed by any candidate by writing signed by him or by a proposer or seconder if he is absent from the United Kingdom (p). The decisions of the returning officer or deputy must be in writing, but are not sent to any candidate. [588]

The returning officer or deputy must at least four days before the day of election cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed to some place appointed by him (q).

Where there are more nominations than there are vacancies, any candidate may withdraw from his candidature by notice signed by him and delivered at the place fixed by the returning officer not later than two o'clock in the afternoon of the day next after the last day for delivery of nomination papers. Such notices of withdrawal are to take effect in the order in which they are delivered, and no notice is so to take effect as to reduce the number of nominations below the number of vacancies (r). [589]

*Notice of Election.*—Nine days at least before the day of election, the clerk of the county council must prepare and sign a notice thereof, and publish it by fixing it to a place appointed by the returning officer or deputy (s). [590]

**Metropolitan Borough Council.**—Metropolitan borough councillors retire *en bloc* on November 1 every three years when a fresh election is held.

(g) 10 Statutes 578 *et seq.*

(h) 7 Statutes 511.

(i) 10 Statutes 660.

(k) Sched. III., Part II., para. 7.

(l) L.C.C. (General Powers) Act, 1934, s. 31 (5); 27 Statutes 419.

(m) Municipal Corpsns. Act, 1882, Sched. III., Part II., para. 8.

(n) *Ibid.*, para. 9.

(o) *Ibid.*, para. 12.

(p) *Ibid.*, para. 11.

(q) *Ibid.*, para. 15.

(r) Municipal Corpsns. Act, 1882, Sched. III., Part II., para. 17; 10 Statutes 661.

(s) *Ibid.*, s. 54; *ibid.*, 593.

The election of metropolitan borough councillors is regulated by rules framed by the Secretary of State, those in force at the moment being the Metropolitan Borough Councillors Election Rules, 1931 (*t*), 1933 (*u*) and 1934 (*a*). [591]

*Notice of Election.*—Not later than sixteen clear days before the day of election the returning officer is to prepare and sign a notice of the election, and cause public notice of the same to be given (Rule 2). [592]

*Polling Places.*—Where the number of electors in the polling district is not more than 700, only one polling station is to be provided for the district; and so on for each additional 700 electors, or for any less number of electors over and above the last 700 (Rule 12). [593]

*Nominations.*—Nominations must be received by the returning officer at his office not later than noon on the 12th day before the day of election (First Schedule to 1931 Rules). The returning officer must send notice of his decision on the validity of nomination papers, and must make out a statement as to persons nominated, as required by Rule 3 of the 1934 Rules, not later than the 11th day before the day of election (First Schedule to 1931 Rules). Nomination papers must be signed by two electors of the ward or district, and no more, as proposer and seconder, and must state their respective addresses. [594]

*Withdrawal.*—Candidates may withdraw their candidature in accordance with Rule 8 of the 1931 Rules not later than noon on the 8th day before the day of election (First Schedule to the 1931 Rules). [595]

*Notice of Poll.*—This must be given in the form and with the particulars specified in Rules 13, 26, and Second Schedule of the 1931 Rules at least two clear days before the day of election (First Schedule to 1931 Rules). [596]

(*t*) S.R. & O., 1931, No. 22.

(*u*) *Ibid.*, 1933, No. 1127.

(*a*) *Ibid.*, 1934, No. 963.

## ELECTIVE AUDITORS

*See AUDITORS.*

## ELECTORAL DIVISIONS

*See COUNTY ELECTORAL DIVISIONS.*

## ELECTORS

*See LOCAL GOVERNMENT ELECTORS.*

# ELECTRICAL ENGINEER

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*See also title : ELECTRICITY SUPPLY.*

The development of the public supply of electricity dates from the Electric Lighting Act, 1882. Nine other Acts have been placed upon the Statute Book since that date and the series of Acts is now known as the Electricity (Supply) Acts, 1882 to 1935. Under these Acts local authorities are, in many instances, "authorised undertakers," the undertaking in such cases being under the control of a committee of the local authority and in charge of an officer who is invariably the electrical engineer and is often described as "The Electrical Engineer and Manager."

It is to be observed that progress in electrical development is such that the electrical engineer working under the appropriate committee of his council is called upon to solve many problems which are neither strictly technical nor coming within the usual ambit of the work of a local authority. It should be remembered that the undertaking, although carried on by a local authority, is in some respects analogous to that of a large commercial undertaking, and many and constant efforts must be made to ensure an increasing sale of electricity for both industrial and domestic purposes. It is essential that close co-operation should exist between the electrical engineer and other departments of the local authority, for instance with the chief financial officer who is responsible for the financial supervision of all the activities of his council. [597]

**Appointment.**—The appointment of an electrical engineer is not obligatory upon the authority, but it is difficult to envisage an undertaking fulfilling its functions without a properly qualified technical administrator. Vacancies are usually advertised in the principal technical and local government periodicals. The electrical engineer is not one of the statutory officers specially mentioned in sects. 106, 107 of the L.G.A., 1933 (a), whom a local authority must appoint, but is one of such other officers as the authority may consider necessary for the efficient discharge of their functions. [598]

**Tenure of Office.**—The officer holds his office during the pleasure of the council, unless there is a special agreement that notice of a specified length shall be given on either side (b). [598a]

**Qualifications.**—Local authorities demand high technical and professional qualifications for an appointment as electrical engineer, and

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(a) 26 Statutes 361, 362.

(b) L.G.A., 1933, ss. 106 (2), 107 (2), 121 ; 26 Statutes 362, 370.

he usually is a corporate member of the Institution of Electrical Engineers. This, however, is not a compulsory qualification. [599]

**Dismissal or Removal from Office.**—The dismissal or removal from office of an electrical engineer and manager is governed by the terms of his engagement with the council, but of course any such officer is liable to be summarily dismissed for misconduct. See, generally, title APPPOINTMENT AND DISMISSAL OF OFFICERS at p. 340 of Vol. I. [600]

**Duties.**—Certain statutory duties are imposed on authorised undertakers by the Electricity (Supply) Acts, and it is the duty of the engineer to see, in matters within his jurisdiction, that the Acts, and the regulations of the Electricity Commissioners made under the Acts, are adhered to. The obligations of authorised undertakers are set out in the title ELECTRICITY SUPPLY, p. 274, *post.* [600a]

The reorganisation of the system of generation of electricity contemplated under the Electricity (Supply) Act, 1926 (c), has had an important reaction on the duties and functions attaching to the office of the electrical engineer to an authorised undertaker.

The principal object of this scheme of reorganisation is the concentration of the generation of electricity in the most efficient stations which are to be interconnected and to be known as "selected stations"; with the ultimate abandonment of generation at all other stations, which will take their supplies from the "Grid" system.

Thus the electrical engineer and manager to any authority undertaker will when the scheme is in full operation have under his control either :

- (a) a "selected station" which will be operated under the directions of the Central Electricity Board; or
- (b) a "non-selected station" (d).

The electrical engineer to any undertaker who is the owner of a "selected station" will be called upon to assume very considerable responsibilities since, in addition to supplying the requirements of his own undertaking, the station under his control will be operated, under his supervision at the directions of the Central Board, for delivering supplies to other authorised undertakers connected to the "Grid" system. Also an electrical engineer in control of a "selected station," particularly if it is a base load station, must possess high technical qualifications, and he will be called upon to keep himself informed of the latest developments and improvements in modern steam plant practice, since the main purpose of a "selected station" is to generate electricity at the lowest possible fuel consumption and at the highest thermal efficiency.

In view of the dual functions mentioned above, the electrical engineer and manager controlling a "selected station" must work in close co-operation with the officers of the Central Electricity Board if the results of the developments anticipated under the "Grid" scheme are to be achieved. [601]

The type of organisation to be set up for a local authority's electrical undertaking so as to secure the best results will clearly depend upon particular circumstances. It is impossible to formulate a definite scheme which will apply to every undertaking. Generally speaking,

(c) 7 Statutes 792.

(d) Out of an approximate total of 130 selected stations, 85 are owned by Local Authority Undertakers.

however, the duties of an electrical engineer will fall under three heads as follows. [601a]

*Technical.*—The electrical engineer, who is generally the manager of the undertaking, has, under his committee, the full responsibility for the efficient working of the undertaking and the supply and/or distribution of electricity. Among other duties are (1) the selection, installation, maintenance and operation of all technical equipment in every branch of the undertaking; (2) the preparation of all plans, specifications and estimates; (3) the invitation of tenders. He will, of course, act generally under the instructions of his committee. [602]

*Administrative.*—The electrical engineer must be responsible for the administrative side of the undertaking and often for its commercial activities. It must be remembered that the supply of electricity by a local authority is in the nature of a trading undertaking and is thus subject to competition. It is essential, therefore, if proper development is to take place, that the charges and tariffs both to the domestic and to the large power consumers should be on an attractive, yet at the same time economic, basis. The framing of the domestic tariffs and the basis of the large power contracts are therefore matters which primarily would be dealt with by the electrical engineer and manager to the undertaking in consultation with the chief financial officer, and it is essential that the resultant prices under such tariffs and contracts are based on sound commercial principles, if the financial success of the undertaking is to be assured. With regard to staff matters he will (1) recommend to the appropriate committee of the local authority in all cases of appointment, suspension and dismissal of senior assistants, (2) deal generally with all matters arising out of conditions of employment, rates of salary or wages. [603]

*Financial.*—Matters relating to finance fall normally under two heads, financial management and financial control.

The responsibility for the regulation and control of the finance of the electricity undertaking lies with the local authority and is exercised, as in all other cases, through the finance committee and the chief financial officer; the electricity receipts form an integral part of the general rate fund and the liabilities are discharged from that fund (e). See title GENERAL RATE FUND. [603a]

Co-operation between the electrical engineer and the financial officer is of great importance and this co-operation can be effected without any confusion of function and to the definite advantage of the local authority. The charging and collection of accounts for electricity supplied may be mentioned as an illustration. The engineer's department is responsible for the reading of meters and record of consumption, and by arrangement may render the accounts. The collection of accounts is generally a responsibility of the finance department, but by arrangement the engineer's department may collect accounts, and in either case it is desirable that facilities should be given for payment of accounts at the electricity showroom. Similarly any complaints or inquiries relating to the supply received by the finance department with remittances, should be referred directly to the electricity department.

The engineer should be furnished promptly with necessary information as to income and expenditure on revenue account, and also

as to the progress of expenditure on capital schemes which have been approved by the authority in those cases where the records are not wholly kept in the supply department by its own officers.

The receipt and issue of materials and stores is the responsibility of the electrical engineer, and, except where there is a central costing department, it may be a convenient arrangement for the electricity costs accounts also to be kept in the department, subject to audit supervision by the finance department.

Questions of borrowing, alterations of tariffs, and other matters of financial policy would normally be subject to the financial regulations and standing orders of the council, and decided by the council on reports from the electricity and finance committees. [604]

In the case of the smaller undertakings the whole of the financial aspect is under the control of the chief financial officer, but in some of the large undertakings the engineer and manager may be charged with duties relating to the internal financial administration of the undertaking. [605]

## ELECTRICITY COMMISSIONERS

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*See also title: ELECTRICITY SUPPLY.*

### CONSTITUTION AND FUNCTIONS

The Electricity Commissioners were established in pursuance of sect. 1 of the Electricity (Supply) Act, 1919 (*a*), "for promoting, regulating and supervising the supply of electricity." In addition to the powers conferred upon the Commissioners by that Act and by subsequent Electricity (Supply) Acts, they exercise most of the administrative powers in regard to the supply of electricity formerly exercised by the Board of Trade under the Electric Lighting Acts of 1882, 1888 and 1909 (*b*). The change was effected in this way.

(a) 7 Statutes 754.

(b) *Ibid.*, 686 *et seq.*

Sect. 39 (1) of the Act of 1919 (c) provided that all the powers and duties of the Board of Trade in relation to the supply of electricity should be transferred to the Minister of Transport: and these powers included the authority given by sect. 2 of the Act (d) to the Board of Trade to exercise any of their powers and duties under the Electric Lighting Acts through the Commissioners. The Minister accordingly in 1921 and later years authorised the Commissioners to exercise these powers and duties on his behalf with certain exceptions (e). The most important of these exceptions include:

- (i.) The powers and duties of the Minister under sect. 28 (Appointment of arbitrators) of the Electric Lighting Act, 1882 (f); sect. 2 (Purchase of undertaking by local authority) of the Act of 1888 (g); sects. 10 (b) (Overhead lines), 14 (Approval of street or bridge works), 31 (Method of charging), and 32 (Maximum prices) of the Schedule to the Electric Lighting (Clauses) Act, 1899 (h), as incorporated with any Act or order, and any corresponding provisions contained in any pre-1899 Act or order.
- (ii.) Powers in regard to the appointment of arbitrators, and the revocation or cesser of powers, under any Act or order.
- (iii.) Powers, in any local, special or private Act relating to the supply of electricity, in regard to the appointment of arbitrators, to the placing of electric lines above ground, to consents unreasonably withheld, to the revision of prices or of the relation between price and dividend, and to the cesser of powers.

These excepted functions are exercised by the Minister, as are any functions assigned to him by legislation subsequent to the Act of 1919.

The Electricity (Supply) Acts, 1919, 1922, 1926, 1928, 1933 and 1935, give the Commissioners powers and duties in addition to those under the Electric Lighting Acts which were transferred to them by the Minister of Transport. Thus the Commissioners may constitute a separate electricity district, and may formulate a scheme for improving the organisation of supply therein, including the establishment of a joint electricity authority (i). Such a scheme is brought into force by an order of the Commissioners, confirmed by the Minister of Transport, and approved by resolution of each House of Parliament (k). And for various purposes the order, consent, approval or decision of the Commissioners is required by the Electricity (Supply) Acts. [606]

The Commissioners, who may not exceed five in number, are appointed by the Minister of Transport with the concurrence of the Board of Trade. Two are appointed for a term of office fixed by the Minister at the time of the appointment: the remainder hold office

(c) 7 Statutes 777.

(d) *Ibid.*, 755. Note that the functions that might be exercised through the Electricity Commissioners did not include any functions conferred on the Board of Trade by the Act of 1919. These, therefore, are exercised by the Minister.

(e) These authorisations are not S.R. & O., but are printed on p. 257 of Will's Electricity Supply, 6th ed.

(f) 7 Statutes 697.

(g) *Ibid.*, 702.

(h) *Ibid.*, 711, 713, 726.

(i) Act of 1919, s. 5, as altered by s. 36 of the Act of 1926; 7 Statutes 756.

(k) Act of 1919, s. 7; 7 Statutes 757. See also title ELECTRICITY SUPPLY, post, p. 298.

during His Majesty's pleasure (*l*). The offices of the Commissioners are at Savoy Court, Strand, London, W.C.2.

The Act of 1919 did not constitute the Commissioners a body corporate. Any document or instrument purporting to be an order or instrument issued by the Commissioners and to be signed by their secretary, or a person authorised to act on behalf of their secretary, is to be received in evidence under sect. 1 (8) of the Act of 1919 (*m*) without further proof and deemed to be such order or instrument unless the contrary is shown.

The Commissioners are solely responsible to the Minister of Transport, and the Minister is to refer to the Commissioners for their advice all matters connected with the exercise of the functions transferred to him from the Board of Trade, except the approval of or appeal from an act of the Commissioners (*n*).

The expenses of the Commissioners are met by contributions from all authorised undertakers proportionate to the number of units sold by them during the year (*o*).

The Commissioners are given power to hold or cause to be held inquiries by sect. 33 of the Act of 1919. Witnesses may be summoned, and evidence taken on oath. **[607]**

#### SPECIAL ORDERS

By sect. 26 of the Electricity (Supply) Act, 1919 (*p*), anything which, under the Electric Lighting Acts, 1882 to 1909, might be effected by a provisional order confirmed by Parliament, may be effected by a special order made by the Electricity Commissioners and confirmed by the Minister of Transport. Any such special order has no force until approved by resolutions of each House of Parliament (*q*).

A special order so made (*i.e.* under sect. 26 of the Act of 1919) cannot be amended or revoked by another special order under that section (*r*), although provisional orders previously made under the Electric Lighting Acts may be so amended or revoked.

Special orders which the Commissioners are authorised to make by the Act of 1919 or subsequent legislation (other than those made under sect. 26 as above) are laid before each House of Parliament for thirty days during which the House is sitting, but do not require approval by resolution (*s*). **[608]**

The procedure governing the making and confirmation of special orders authorising the supply of electricity is set out in the title **ELECTRICITY SUPPLY, post**, pp. 302—305. **[609]**

#### DEPARTMENTAL ORDERS

Departmental orders are orders which the Electricity Commissioners are authorised to make, and which require for their validity no further sanction or approval. Those most often used are described below.

**Fringe Orders.**—The Commissioners may by order authorise undertakers to supply premises outside the area of supply, when the occupier

(*l*) Act of 1919, ss. 1, 39 ; 7 Statutes 754, 777.

(*m*) 7 Statutes 755.

(*n*) Act of 1919, s. 39 (2) ; 7 Statutes 777.

(*o*) *Ibid.*, s. 29 (2) ; Act of 1922, s. 7 (2).

(*p*) 7 Statutes 772.

(*q*) In some cases Parliament has heard opponents to an order after referring it to a Special Committee ; e.g. E. Notts Electricity Special Order, 1928.

(*r*) *R. v. Minister of Transport* (1928), 189 L. T. 660 ; Digest (Supp.). In certain cases special orders which the Commissioners are authorised to make under the Electricity (Supply) Acts must be made under this section.

(*s*) Act of 1919, s. 35 (3) ; 7 Statutes 775.

is desirous of obtaining a supply from them, upon such terms and conditions as the Commissioners think fit (*t*). Such an order may confer upon the undertakers the powers and impose upon them the duties of undertakers as if the premises and lines were within their own area of supply (*u*).

The consents of the local authority within whose borough or district the premises are situate, and of the undertakers (if any) authorised to supply the premises, are required, unless dispensed with by the Commissioners as unreasonably withheld.

The necessary procedure in obtaining an order is described in a memorandum of the Commissioners (*a*). The application must be made in respect of specific premises, and must be accompanied by the particulars set out in the memorandum. [610]

**Supply in Bulk to other Undertakers.**—The Commissioners may by order permit undertakers to supply electricity in bulk to other undertakers, if the supply can be given without breaking up any streets except those which one or other of the undertakers are authorised to break up (*b*). An application for such an order must contain the particulars required by the Commissioners' memorandum (*c*). Notice must be given to the joint electricity authority or other body established for the electricity district (if any). Should the Commissioners decide to consider the application, further notices must be given. [611]

#### REGULATIONS OF COMMISSIONERS

The Electricity Commissioners impose upon authorised undertakers regulations for securing the safety of the public and for ensuring a proper and sufficient supply of electrical energy. See the title **ELECTRICITY SUPPLY**, *post*, pp. 281, 282.

The Commissioners also make and enforce regulations in respect of lines and works of unauthorised undertakers under sect. 4 of the Electric Lighting Act, 1888. [611a]

#### APPROVALS BY COMMISSIONERS

The approval of the Electricity Commissioners is required for a number of purposes of which the following are those most commonly applied for.

**Arrangements for Mutual Assistance.**—Where no joint electricity authority has been established, two or more undertakers may, with the approval of the Commissioners, enter into and carry into effect arrangements for mutual assistance for certain purposes. These purposes include the giving, taking and distribution of a supply of electricity; the management and working of generating stations or parts of undertakings; the provision of capital and the division of receipts (*d*). The Commissioners may authorise the breaking up of streets, where such powers are required.

The application for approval must contain the particulars described

(*t*) Electric Lighting Act, 1909, s. 6 (1); 7 Statutes 747.

(*u*) *Ibid.*, s. 6 (2).

(*a*) Memorandum of Procedure in respect of applications for orders under s. 6 of the Act of 1909 (El. C. 47A) printed on pp. 559, 560 of Will's Electricity Supply, 6th ed.

(*b*) Electric Lighting Act, 1909, s. 4 (3); 7 Statutes 747.

(*c*) Memorandum of Procedure in respect of applications for Orders under s. 4 (3) of the Act of 1909 (El. C. 50) printed on pp. 567, 568 of Will's Electricity Supply, 6th ed.

(*d*) Electricity (Supply) Act, 1919, s. 19 (1); 7 Statutes 766. Similar provisions are contained in several orders constituting joint electricity authorities.

in the Commissioners' memorandum (e). If the Commissioners decide to consider the application, certain notices must be given. [612]

**System of Supply.**—Undertakers may only supply electricity by means of some system approved by the Electricity Commissioners (f). General approval has been given to certain systems by publication in the *London Gazette* for July 3, 1906 (g), and August 17, 1928 (h). In these approvals the insulation required for mains and certain other particulars are prescribed.

A special approval is necessary for any system other than those described in the above notices. [613]

**Meters.**—A meter by which the "value of the supply" to an ordinary consumer is ascertained must be certified by an electric inspector to be one approved by the Electricity Commissioners (i). A number of standard patterns have been approved. The general requirements of the Commissioners are set out in a "Memorandum with regard to Electricity Meters, etc." Meters for approval should be submitted to the National Physical Laboratory, Teddington. [614]

#### CONSENTS BY COMMISSIONERS

The following are some of the principal purposes for which the consent of the Electricity Commissioners is required.

**Construction or Extension of Generating Station or Main Transmission Line.**—The consent of the Commissioners is required to the establishment of a new, or the extension of an existing, generating station or main transmission line (k). Applicants must conform to the Commissioners' memorandum of procedure in regard to such applications (l). [615]

**Application by Local Authority of Surplus Revenue to Capital Purposes.**—Local authority undertakers may with the consent of the Commissioners apply the net surplus revenue remaining in any year, and the annual proceeds of the reserve fund when amounting to the prescribed limit, in payment of expenses chargeable to capital (m). It is understood that the Commissioners are willing to give a general approval in certain circumstances. Application for consent may be made by letter. [616]

**Breaking up Streets not Repairable by Local Authority.**—The consent of the Commissioners is required for the breaking up of streets not repairable by the local authority (or any railway or tramway) where the undertakers are not empowered to do so by their Act or order, and where the consent of those by whom the street, railway or tramway is repairable has not been obtained (n). The requirements of the

(e) Memorandum of Procedure in respect of applications under s. 19 of the Act of 1919 (El. C. 45), printed on pp. 553, 554 of Will's Electricity Supply, 6th ed.

(f) Electric Lighting (Clauses) Act, 1899, sched., s. 10 (a); 7 Statutes 711.

(g) Low and high pressure systems.

(h) Extra high pressure systems.

(i) Electric Lighting (Clauses) Act, 1899, sched., ss. 49, 50; 7 Statutes 731; being the sections substituted by s. 11 of Electric Lighting Act, 1909.

(k) Electricity (Supply) Act, 1919, s. 11; 7 Statutes 758. This does not apply to a private generating station.

(l) Memorandum of Procedure in respect of applications for consent under s. 11 of the Act of 1919 (El. C. 46), printed on pp. 555—559 of Will's Electricity Supply, 6th ed.

(m) Electric Lighting (Clauses) Act, 1899, sched., s. 7; 7 Statutes 709; there printed as amended by the Act of 1926, s. 43.

(n) Electric Lighting Act, 1882, s. 13; Electric Lighting (Clauses) Act, 1899, sched., s. 12; 7 Statutes 693, 712.

Commissioners with regard to the application are set out in their memorandum of procedure (*o*). Notice must be given to the authority, company or person by whom the street, railway or tramway is repairable, as the Commissioners may direct. The application must contain an accurate description of the street, etc., and must be accompanied by a 6-inch plan. The applicants must forward to the Commissioners proof that these requirements have been complied with. [617]

**Change of Declared Type of Current, etc.**—By the Electricity Supply Regulations, 1934, undertakers must, before commencing to give a supply to any consumer, declare the type of current, voltage, and (for alternating current) the number of phases and the frequency of the proposed supply. No change may be made beyond the permissible variations in these particulars without the consent of the Electricity Commissioners, who may impose terms and conditions in giving their consent (*oo*).

Application for consent may be made by letter. [618]

#### BORROWING BY LOCAL AUTHORITY

**Borrowing Powers.**—The consent of the Electricity Commissioners is required as sanctioning authority to the borrowing of money by a local authority for the purposes of the Electricity (Supply) Acts or of any other enactment or statutory order relating to the supply of electricity (*p*). With such consent the authority may borrow for the purpose of acquiring any land or erecting any building which they have power to acquire or erect; for the purpose of executing any permanent work or providing any plant or doing any other thing within their powers if in the opinion of the Commissioners the cost of carrying out that purpose ought to be spread over a term of years; or for any other purpose for which they are authorised to borrow by Act or statutory order (*pp*). The proposed period for repayment is to be agreed to by the Commissioners; but the sinking fund provision may be suspended, in the case of the construction of new, or the extension or alteration of existing works, for any unremunerative period not more than five years, subject to conditions determined by the Commissioners (*q*). [619]

**Particulars Required by Commissioners.**—The Commissioners have issued a memorandum for the guidance of councils applying for sanction (*r*). The application should be on the prescribed forms (*s*) and should be made before any liability is incurred. Sanction is not usually given till all necessary consents and approvals have been obtained, e.g. to the extension of a generating station. So far as is practicable, the application should be in respect of specified works.

An application in respect of specified works should cover the complete cost of the works, so far as the cost is to be met by borrowing.

(*o*) Memorandum of Procedure in respect of applications under s. 13 of the Act of 1882 (El. C. 49), printed on pp. 566, 567 of Will's Electricity Supply, 6th ed.

(*oo*) Electricity (Supply) Regulations, 1934, r. 34.

(*p*) L.G.A., 1933, s. 218. By this Act s. 8 of the Electric Lighting Act, 1882 (except the first twenty-one words) and part of the schedule to that Act are repealed outside London. The borrowing powers of local authority undertakers in London remain governed by the Act of 1882, as modified by subsequent legislation.

(*pp*) *Ibid.*, s. 195. Temporary loans may be raised without sanction in certain cases, e.g. by overdraft in anticipation of revenue; see s. 215; 26 Statutes 422.

(*g*) *Ibid.*, s. 198; 26 Statutes 414.

(*r*) Memorandum for the guidance of Authorities applying for sanction to borrow (El. C. 48 (Revised 1933)).

(*s*) Forms El. C. 48A (Specified Works) and 48B (Unspecified Works).

A technical report as to the necessity of the proposed works is required, together with the particulars of any existing works to be superseded, and of outstanding loans thereon. A detailed estimate of the expenditure involved (under headings set out in the memorandum) must be sent with the application. Information should be given showing the arrangements contemplated for carrying out the works—e.g. competitive tendering or direct labour, etc. Contingency amounts should not be included to cover expenditure on items which can be foreseen and enumerated.

An application in respect of unspecified works may be made to cover estimated requirements during a period not exceeding three years for the purposes set out in the memorandum. These include underground L.T. mains, overhead distributing mains, house services, sub-station equipment, meters, wiring, installation, and apparatus on hire or hire-purchase. The application should be made before any sanction previously given has been exhausted. Statements with regard to previous expenditure for similar purposes are required, for which forms are included in the memorandum. **[620]**

**Periods of Loans.**—The longest periods allowed for loans by the Electricity Commissioners include the following :

*Land :*

Freehold	—	—	—	—	—	—	60 years.
Leasehold (subject to duration of lease)	—	—	—	—	—	—	30 years.

*Buildings and other permanent works :*

Substantial buildings, reinforced concrete works, and concrete ponds	—	—	—	—	—	30 years.
Wooden or steel cooling tower, and steel or iron banks therefor	—	—	—	—	—	15 years.
Artesian wells	—	—	—	—	—	30 years.

*Machinery and plant* — — — — — 30 to 20 years.

(Generating plant specially liable to obsolescence, 15 years).

*H.T. Transmission Lines :*

Approved mains laid in an approved manner	—	—	—	—	—	40 years.
Approved mains drawn into approved conduits	—	—	—	—	—	30 years.

*Overhead Lines :*

All overhead lines (including supports) erected in an approved manner — — — — — 25 years.

*Mains and Services* — — — — — 25 years.

*Meters* — — — — — 10 years.

*Wiring of houses* — — — — — 15 years.

*Apparatus to be let on hire :*

Motors	—	—	—	—	—	—	10 years.
Domestic appliances	—	—	—	—	—	—	7 years.

**[621]**

#### ACCOUNTS OF UNDERTAKERS

An annual statement of accounts must be prepared, in the form prescribed by the Commissioners, by local authority undertakers on or before June 30, and by company undertakers on or before March 25,

in each year, and a copy forwarded to the Commissioners (*t*). The accounts of company undertakers are to be audited by persons appointed by the Commissioners (*u*). [622]

#### ADVISORY FUNCTIONS OF COMMISSIONERS

The Commissioners advise the Minister of Transport in the exercise of the powers and duties transferred to him from the Board of Trade under the Electricity (Supply) Act, 1919, and not delegated by him to the Commissioners. For a statement of the powers reserved by the Minister, see *ante*, p. 267.

The following are the principal objects for which application is required to be made in the first place to the Minister of Transport.

**Wayleaves.**—The consent of the Minister of Transport is required to the placing by undertakers of lines across private ground, where the consents of the owner and occupier are not obtained (*a*). [623]

**Overhead Lines.**—A line may not be placed by undertakers above ground without the express consent of the Minister of Transport, except within premises in their sole occupation or control, and except service lines necessarily so placed (*b*). A memorandum of particulars required is issued (*c*). The Commissioners have made Overhead Line Regulations as regulations for securing the safety of the public (*d*). [624]

**Revision of Maximum Charges.**—The Minister of Transport may make an order varying the prices or methods of charge stated in any special order or Act at intervals of not less than three years on the application of :

- (a) the undertakers ; or
- (b) such number of consumers (not less than 20) as the Minister considers sufficient ; or
- (c) the local authority (*e*). [625]

(*t*) Electric Lighting Act, 1882, s. 9 (7 Statutes 691), as amended by Electric Lighting Act, 1909, s. 12 ; 7 Statutes 750.

(*u*) Electric Lighting (Clauses) Act, 1899, sched., s. 6 ; 7 Statutes 709.

(*a*) Electricity (Supply) Act, 1919, s. 22 ; 7 Statutes 768. See title ELECTRICITY SUPPLY, post, pp. 286, 287.

(*b*) Electric Lighting (Clauses) Act, 1899, sched., s. 10 (*b*) ; 7 Statutes 711.

(*c*) Form El. C. 34.

(*d*) Overhead Line Regulations (El. C. 53 Revised), and Explanatory Memorandum (El. C. 53A), printed on pp. 585—594 of Will's Electricity Supply, 6th ed.

(*e*) Electric Lighting (Clauses) Act, 1899, sched., s. 32 (2) ; printed 7 Statutes 727, as amended by s. 22 of the Electricity (Supply) Act, 1922.

## ELECTRICITY SCHEMES

*See CENTRAL ELECTRICITY BOARD ; ELECTRICITY COMMISSIONERS.*

# ELECTRICITY SUPPLY

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*See also titles :*

CENTRAL ELECTRICITY BOARD ;  
ELECTRICAL ENGINEER ;  
ELECTRICITY COMMISSIONERS ;

| STREET LIGHTING ;  
TRANSPORT, MINISTRY OF.

#### COURSE OF LEGISLATION

The statute law relating to the supply of electricity by authorised undertakers is contained in the Electricity (Supply) Acts, 1882 to 1935 (*a*), which are all to be read as one Act, and which are applied (where such application is appropriate) to all undertakers authorised to supply electricity within any area by a provisional order or (later) a special order, or by a special Act of Parliament.

Before 1899, a number of provisions were included by the Board of Trade in each provisional order authorising the supply of electricity made by them under the Electric Lighting Act, 1882 (*b*). These provisions gradually became common form, and in 1899 were embodied in the Schedule to the Electric Lighting (Clauses) Act, 1899 (*c*), and were by sect. 1 of that Act incorporated (save as varied or excepted) with every provisional order made subsequently by the Board of Trade under the Electric Lighting Acts and with every special Act subsequently passed authorising the supply of electricity within an area. Provisional orders have been superseded by special orders made by the Electricity Commissioners under sect. 26 of the Electricity (Supply) Act, 1919 (*d*), confirmed by the Minister of Transport and approved, either with or without modifications, by a resolution passed by each House of Parliament (*e*). References to provisional orders in the Electric Lighting Acts and the Electric Lighting (Clauses) Act, 1899, are by the same section to be construed as including references to special orders. The provisions of the Schedule to the Clauses Act of 1899 are therefore incorporated with a special order, save as varied or excepted by that order.

(*a*) 7 Statutes 686 *et seq.*; 26 Statutes 137; Acts preceding the Electricity (Supply) Act, 1919, were called Electric Lighting Acts.

(*b*) 7 Statutes 686.

(*c*) *Ibid.*, 706.

(*d*) *Ibid.*, 772.

(*e*) A provisional order had to be confirmed by a Bill, which passed through all the stages of a private Bill. Both special orders and provisional orders may be bought of H.M. Stationery Office, Kingsway, W.C.2, unless out of print.

Authorised undertakers are further subject to regulations made by the Electricity Commissioners from time to time for certain purposes defined by statute.

The powers and duties of any particular body of undertakers are only to be ascertained by examining the order or Act by which they are authorised to supply electricity, inasmuch as the Schedule to the Electric Lighting (Clauses) Act, 1899, may be varied in its application to their undertaking, and the order or Act may contain special provisions. While the Electricity (Supply) Acts, 1882 to 1935, apply to all undertakings authorised by order, their application may be varied in the case of undertakings authorised by special Act. **【626】**

Local authorities, companies or persons who are authorised to supply electricity in any area are, in the Electricity (Supply) Acts, called "undertakers" or "authorised undertakers" (f). Authorised undertakers may be either "authorised distributors" or "power companies." Authorised distributors may (and under certain conditions must) supply electricity within their area for all purposes; power companies only for limited purposes, such as for power, or for a supply in bulk to authorised distributors (g). A power company must be authorised by special Act.

Companies combining the characteristics of authorised distributors and power companies have been created by special Act. Such companies are given a large area throughout which they have power of supply for all purposes, subject to the rights of undertakers already authorised to supply in the area; they are put under the full obligations to supply as authorised distributors in parts only of their area, but must bring up proposals from time to time to extend such "distribution" limits. They are subject to the usual obligations of a power company throughout the area (h).

The powers and obligations of authorised undertakers vary greatly according to the type of the undertaking. Authorised distributors whose undertaking was authorised by provisional (or special) order since 1899 must be subject to all the relevant provisions of the Electricity (Supply) Acts, and are usually subject to most, if not all, of the provisions of the Schedule to the Electric Lighting (Clauses) Act, 1899. It will be convenient to examine in the first place the powers and obligations of authorised distributors, authorised by a provisional (or special) order, to whom the whole of the Schedule to the Act of 1899 applies.

**【627】**

#### POWERS AND OBLIGATIONS OF AUTHORISED DISTRIBUTORS

**Supply of Energy.** *Power to Supply.*—The undertakers may supply electrical energy within their area of supply for all public and private purposes (i). For the purpose of supply they may acquire lands by agreement, construct works, enter into contracts, and do all things necessary and incidental to the supply (k). The act of supply, together

(f) Electric Lighting Act, 1882, s. 2; 7 Statutes 686; Electric Lighting Act, 1909, s. 25; 7 Statutes 753; Electricity (Supply) Act, 1919, s. 36; 7 Statutes 776.

(g) Electricity (Supply) Act, 1919, s. 36; 7 Statutes 776.

(h) See e.g. the Wessex Electricity Act, 1927 (17 & 18 Geo. 5, c. lxxii.).

(i) Electric Lighting (Clauses) Act, 1899, sched., s. 10; 7 Statutes 711. For definitions of "public" and "private" purposes, see Electric Lighting Act, 1882, s. 3; 7 Statutes 686.

(k) Electric Lighting Act, 1882, s. 10; 7 Statutes 691.

with the undertakers' powers and obligations in relation thereto, terminates at the consumer's terminals (*l*).

Where a local authority are authorised to supply electricity, a supply afforded to their own tramway undertaking is part of their statutory supply (*m*). **[628]**

*Area of Supply.*—The undertakers may not supply energy or construct works beyond their area of supply without Parliamentary authority (*n*). This is an absolute prohibition, and the grant of statutory powers to supply within an area prevents the grantees from supplying energy outside that area, whether in connection with their statutory undertaking or not (*o*). It may be doubted, however, whether the prohibition would extend to an unauthorised supply by a totally separate business merely because it was in the same ownership (*p*).

Where a supply is delivered at consumer's terminals within the area of supply, the fact that the consumer uses the energy outside the area of supply does not render the supply illegal (*q*). **[629]**

*Fringe Order.*—The Electricity Commissioners may by order (commonly called a "fringe order") permit the undertakers to supply premises outside their area of supply, where the occupier of the premises desires it (*r*). The consent of the local authority within whose district the premises are, and of any other undertakers authorised to supply the premises, must be obtained; but their consent cannot be unreasonably withheld. The order may confer the necessary powers of breaking up streets, etc. **[630]**

*Supply to Railways, etc.*—The undertakers may, with the consent of the Electricity Commissioners, supply electricity at any point within their area for the purposes of haulage or traction, and lighting vehicles or vessels, on any railway, tramway or canal situated partly within and partly without their area (*s*); and where they are lawfully supplying within their area electricity for haulage or traction to a railway, dock, harbour or canal undertaking situate partly within and partly without their area, they may, with the consent of the Minister of Transport and subject to such conditions as he may prescribe, supply electricity for use for any of the purposes of the undertaking, whether within or without the area (*t*). **[631]**

*Source of Supply.*—Undertakers may generate their own electricity; or may take a supply in bulk from any company or person authorised to give a supply (*u*). Power to break up roads outside the area of the undertakers for this purpose may be obtained by special order where the supply is obtained from other undertakers (*a*). Subject to certain conditions, supplies may be obtained from a statutory generating

(*l*) *A.-G. v. County of London Electric Supply Co.*, [1926] Ch. 542; Digest (Supp.); *A.-G. v. Leicester Corpns.*, [1910] 2 Ch. 359; 20 Digest 198, 5; *A.-G. v. Sheffield Corpns.* (1912), 28 T. L. R. 266; 20 Digest 199, 10.

(*m*) See *Southport Corpns. v. A.-G.*, [1924] A. C. 909; 20 Digest 199, 12.

(*n*) Electric Lighting (Clauses) Act, 1899, sched., s. 4; 7 Statutes 708.

(*o*) *A.-G. v. Metropolitan Electric Supply Co., Ltd.*, [1905] 1 Ch. 24, 757; 20 Digest 206, 41.

(*p*) See *Southport Corpns. v. A.-G.*, *supra*, per Lord ATKINSON at p. 923, when considering supply to a separate business.

(*q*) *A.-G. v. County of London Electric Supply Co.*, *supra*.

(*r*) Electric Lighting Act, 1909, s. 6; 7 Statutes 747.

(*s*) *Ibid.*, s. 5; *ibid.*

(*t*) Electricity (Supply) Act, 1926, s. 47; *ibid.*, 819.

(*u*) Electric Lighting Act, 1909, s. 20; *ibid.*, 751. This section declares that the restriction on association (*see post*) does not prohibit the taking of such a supply.

(*a*) *Ibid.*, s. 3; *ibid.*, 745.

station of a railway, tramway or light railway (b). Undertakers may not without express authority acquire the undertaking of or associate themselves with other authorised undertakers (c); but large powers of mutual assistance (with the approval of the Electricity Commissioners) were conferred in 1919 on undertakers, where a joint electricity authority has not been established (d). Power companies and joint electricity authorities are usually required by their Act or order to supply in bulk authorised undertakers within their area.

The Central Electricity Board (e) was created with the intention that ultimately all authorised undertakers should obtain their supplies from the Board. The Board are under an obligation to supply authorised undertakers demanding a supply in any area in respect of which the Board have notified that they are in a position to supply (f).

[632]

*Monopoly of Supply.*—No local authority, company or person may commence to supply electricity in the area of the undertakers without statutory authority: but this prohibition is not to prevent any company or person, whose business is not primarily the supply of electricity to consumers, from supplying electricity to any other company or person (g).

A supply afforded by a local authority to their own tramway system situated in the area of authorised undertakers is a “supply” within this prohibition (h). [633]

*Obligation to Lay Mains and to Supply.*—Authorised distributors are bound (1) to lay down distributing mains (i); and (2) to afford a supply to all owners and occupiers of premises within 50 yards of a distributing main (k). They may also provide supplies by agreement, whether or not there is a statutory obligation to supply (l).

An order or Act authorising the general supply of electricity specifies certain streets along which distributing mains must be laid. These must be completed within two years of the commencement of the order or Act (m).

The undertakers must also, after eighteen months have elapsed from the commencement of the order or Act, lay down distributing mains in any street when a requisition has been made to them to do so by six or more owners or occupiers of premises in the street, or by the local authority having the control of the public lamps in the street (n). Where the requisition is made by owners and occupiers, the undertakers can require them to guarantee for three years an annual payment which may not be more than 20 per cent. of the expense incurred: and also

(b) Electricity (Supply) Act, 1922, s. 25; 7 Statutes 790.

(c) Electric Lighting (Clauses) Act, 1899, sched., s. 3; *ibid.*, 707.

(d) Electricity (Supply) Act, 1919, s. 19; *ibid.*, 766.

(e) See title CENTRAL ELECTRICITY BOARD.

(f) Electricity (Supply) Act, 1926, s. 10; 7 Statutes 801.

(g) Electric Lighting Act, 1909, s. 23; 7 Statutes 752. See *Caerphilly U.D.C. v. Griffin*, [1928] Ch. 171; Digest (Supp.).

(h) *Southport Corp. v. A.-G.*, [1924] A. C. 909; 20 Digest 199, 12.

(i) A “distributing main” is one giving origin to service lines for general supply. “General supply” means the general supply of energy to ordinary consumers, including the general supply of energy to the public lamps, but not the supply of energy to any one or more particular consumers under special agreement; Electric Lighting (Clauses) Act, 1899, sched., s. 1; 7 Statutes 706.

(k) *Ibid.*, ss. 21, 27; *ibid.*, 721, 724.

(l) Electric Lighting Act, 1882, s. 10; *ibid.*, 691.

(m) Electric Lighting (Clauses) Act, 1899, sched., s. 21; *ibid.*, 721.

(n) *Ibid.*, ss. 21, 24; *ibid.*, 721, 723.

to give security for such payment (*o*). The Electricity Commissioners may determine the requisition to be unreasonable, or otherwise vary the statutory requirements, on the appeal of the undertakers (*o*). Otherwise, any difference between the undertakers and those signing the requisition is to be settled by arbitration (*p*). The distributing mains must be laid within six months (or such further time as may be approved by the Electricity Commissioners) after the requisition has become binding (*q*).

Where the requisition is made by a local authority, the authority must agree to take a supply for their public lamps in the street for three years (*r*).

Where a line is to be laid in a street for the purpose of supply to a particular consumer under special agreement, and not for the purpose of general supply, the undertakers (if not themselves the local authority) must, twenty-eight days before commencing the work, give notice of their intention to the local authority, and to all owners and occupiers of premises in the street abutting on the proposed line; and any two of these owners or occupiers may requisition for a distributing main to be laid at the same time as the proposed line (*s*).

If the undertakers make default in laying distributing mains, they are, if company undertakers, liable to penalties, and both company and local authority undertakers are liable to revocation of their order (*t*).

Owners and occupiers of premises within 50 yards of a distributing main (*u*) have the right to require a continuous supply from that main (*a*). The cost of so much of any line laid for the supply upon the property of the owner or in the possession of the occupier must be borne by the owner or occupier, as well as of any line that it may be necessary to lay for a greater distance than 60 feet from the distributing main, though not on that property (*a*).

To obtain the right to a supply, the owner or occupier must serve a notice on the undertakers specifying the premises, the maximum power required, and the date when the supply is required to commence (which must be a reasonable time after the date of service of the notice) (*b*).

The owner or occupier must also, if required by the undertakers, enter into a written contract to receive and pay for a supply for at least two years, such that the payment at the ordinary rate shall be not less than 20 per cent. per annum on the outlay incurred by the undertakers: and must also, if so required, give security (*c*). The undertakers may require security after they have commenced to supply, and may discontinue the supply if it is not provided (*d*).

(*o*) Electric Lighting (Clauses) Act, 1899, sched., s. 25; 7 Statutes 723.

(*p*) *Ibid.*, s. 25 (5); *ibid.*, 724.

(*q*) *Ibid.*, s. 21 (2); *ibid.*, 721.

(*r*) *Ibid.*, s. 26; *ibid.*, 724.

(*s*) *Ibid.*, s. 22; *ibid.*, 722.

(*t*) *Ibid.*, s. 23; *ibid.*

(*u*) "Any distributing main of the undertakers in which they are required to maintain or are maintaining a supply of energy for the purposes of general supply to private consumers"; Electric Lighting (Clauses) Act, 1899, sched., s. 27 (1); 7 Statutes 724.

Undertakers are required to maintain a constant and sufficient supply of energy in any distributing main through which they have commenced to supply; Electricity Supply Regulations, 1934, reg. 85.

(*a*) Electric Lighting (Clauses) Act, 1899, sched., s. 27 (1); 7 Statutes 724.

(*b*) *Ibid.*, s. 27 (2) (a).

(*c*) *Ibid.*, s. 27 (2) (b).

(*d*) *Ibid.*, s. 27 (3).

The undertakers cannot be compelled to give a supply unless they are reasonably satisfied that the electric lines, fittings and apparatus upon the premises required to be supplied are in good order and condition, and not calculated to affect injuriously the use of energy by the undertakers or by other persons (e).

The undertakers may refuse to supply energy to any person whose payments for supply are in arrear (and not the subject of a *bona fide* dispute), whether in respect of the premises for which a supply is demanded or of other premises (f). [634]

*Maximum Power to be Supplied.*—The maximum power with which a consumer is entitled to be supplied is such amount as he may require, not exceeding what may reasonably be anticipated as the maximum consumption on his premises (g). The consumer may alter this requirement from time to time, giving one month's notice, and paying expenses reasonably incurred by the undertakers.

It has not been determined whether the maximum supply that may be demanded is limited to the maximum consumption upon such portion of the premises as may be within the area of supply of the undertakers. The obligation to supply and the power to do so are not necessarily coterminous (h). [635]

*Stand-by Supply.*—Where the supply is required for stand-by purposes only, the consumer must agree to pay such a minimum sum as will give the undertakers a reasonable return on the capital expenditure incurred by them, and cover other standing charges for the possible maximum demand (i). [636]

*Supply to Public Lamps.*—The undertakers, if not the local authority, must supply such quantity of electricity as the local authority require to any public lamps within 75 yards of any distributing main (k). See also title STREET LIGHTING. [637]

*Discontinuance of Supply.*—In the case of a consumer who is entitled to demand a supply, the undertakers may not (unless otherwise agreed) cut off the supply except under specified circumstances (kk). They may cut off the supply if the consumer neglect to pay any sum due to them, and may discontinue the supply until the sum due, and any expenses incurred in cutting off the supply are fully paid (l). They may also discontinue the supply if the consumer deals with it in any manner so as to interfere unduly or improperly with the efficient supply of energy to any other person (m). They may discontinue the supply as a work of emergency if the consumer's installation is not in proper order and condition (n); or if the consumer fails to give them security for payment which they are entitled to demand (o). [638]

(e) Electric Lighting (Clauses) Act, 1899, sched., s. 27 (5); and see Electricity Supply Regulations, 1934, r. 26.

(f) Electric Lighting Act, 1909, s. 18; 7 Statutes 751.

(g) Electric Lighting (Clauses) Act, 1899, sched., s. 28; *ibid.*, 725.

(h) *A.-G. v. County of London Electric Supply Co.*, [1926] Ch. 542, *per Tomlin*, J., at p. 558; Digest (Supp.).

(i) Electricity (Supply) Act, 1922, s. 23; 7 Statutes 789.

(k) Electric Lighting (Clauses) Act, 1899, sched., s. 29; *ibid.*, 725.

(kk) A consumer who takes a supply in accordance with his statutory rights (often called a "statutory consumer") is given the right to a continuous supply by s. 27 (1) of the schedule to the Electric Lighting (Clauses) Act, 1899.

(l) Electric Lighting Act, 1882, s. 21; *ibid.*, 695.

(m) Electric Lighting (Clauses) Act, 1899, sched., s. 27 (4); *ibid.*, 725.

(n) Electricity Supply Regulations, 1934, reg. 32.

(o) Electric Lighting (Clauses) Act, 1899, sched., s. 27 (3).

*Penalty on Failure to Supply. Damages.*—Where a consumer takes a supply in the exercise of his statutory rights, the undertakers are liable, on making default in supplying energy, to a penalty not exceeding 40*s.* for each day on which the default occurs (*p*). The consumer cannot maintain an action for damages, as the obligation depends upon statute, not upon contract, and a statutory remedy is provided (*q*).

But where the consumer's rights are based on contract, he may recover damages for breach of contract. The statutory penalty only applies to consumers who may demand a supply (*r*). And even in the case of such consumers, the breach of an express contract to supply probably gives a right to damages. [639]

*System of Supply.*—The supply must be given only by means of some system approved in writing by the Electricity Commissioners and subject to the Commissioners' regulations (*s*). By these regulations the type of current must be declared to the consumer, and may not be altered without the consent of the Commissioners. In giving their consent, it is the practice of the Commissioners to impose conditions requiring the replacement of consumers' apparatus by apparatus suitable to the new system (*a*). [640]

*Regulations.*—The Electricity Commissioners issue regulations (*b*) for securing the safety of the public, and for ensuring a proper and sufficient supply of electrical energy, and impose them upon authorised undertakers, whether authorised by order or by special Act. Formerly it was the practice of the Board of Trade, and, later, of the Electricity Commissioners, to impose these regulations specifically upon individual undertakers. Now the regulations are applied to all authorised undertakers by publication in the *London Gazette*. Overhead Line Regulations were and are applied generally to all lines of authorised undertakers as regulations for securing the safety of the public (*c*).

The regulations (other than the Overhead Line Regulations) have recently been amended and consolidated, and the revised (1934) regulations came into force on January 15, 1934, in respect of all works brought into use and all supplies of energy commenced by undertakers on and after that date, in lieu of the regulations then applicable (*d*). In respect of all other works of and all other supplies of energy given by undertakers, the new regulations are to come into force on January 1, 1936, or such other date as may be prescribed by the Electricity Commissioners either generally or in any particular case (*e*). The regulations deal with the character (in regard to insulation, etc.), of works required for low, medium and high voltages, and with various safety precautions ; and impose upon the undertakers the obligation to

(*p*) Electric Lighting (Clauses) Act, 1899, sched., s. 30 (1). No penalty is incurred if the default was caused by inevitable accident or *force majeure*, or did not materially affect the supply ; *force majeure* means material constraint, not mere apprehension (*Hackney Borough Council v. Doré*, [1922] 1 K. B. 431; 20 Digest 205, 37).

(*q*) *Clegg, Parkinson & Co. v. Earby Gas Co.*, [1896] 1 Q. B. 592; 25 Digest 475, 31.

(*r*) *Morris and Bastert, Ltd. v. Loughborough Corp.*, [1908] 1 K. B. 205; 20 Digest 204, 31.

(*s*) Electric Lighting (Clauses) Act, 1899, sched., s. 10; 7 Statutes 711.

(*a*) Electricity Supply Regulations, 1934, reg. 34. See *Lakeman v. Chester Corp.* (1933), 97 J. P. 141; Digest (Supp.).

(*b*) Under s. 6 of the Electric Lighting Act, 1882; 7 Statutes 689.

(*c*) Overhead Line Regulations, 1931 (El. C. 53 (Revised)), printed in Will's Electricity Supply, 6th ed., pp. 585 *et seq.*

(*d*) Electricity Supply Regulations, 1934, not printed in S. R. & O. Those previously in force are given in Will's Electricity Supply, 6th ed., pp. 569 *et seq.*

(*e*) Electricity Supply (Amendment) Regulation, 1934.

maintain a constant supply in their distributing mains, and to declare and maintain within certain limits the declared pressure at the consumer's terminals, and the frequency.

Penalties are provided for default in complying with the regulations (f). [641]

*Extra High-Pressure Supply.*—Special regulations for securing the safety of the public and for ensuring a proper and sufficient supply of electrical energy are applied to extra high-pressure supplies (over 3,000 volts) (g). [642]

*Power of Commissioners to Order Discontinuance of Unauthorised System, etc.*—The Electricity Commissioners have power by order to require the discontinuance of any supply that is not in accordance with an approved system, or of the use of any works that are not in accordance with the regulations, or that are dangerous (h). Penalties are provided; and in case of non-compliance, the Commissioners may revoke the order authorising the undertaking (i). [643]

**Supply of Fittings.**—Local authority undertakers may provide and let out for hire, and, subject to certain restrictions, sell electric fittings and appliances. They may not manufacture, unless specially authorised to do so by their Act or order (k).

Company undertakers have the powers defined in their memorandum and articles in this respect.

A two-part tariff may include a charge for such fittings (l). [644]

**Method of Charging and Price. Recovery of Charges. Supplies under Statutory Obligation. Method of Charge.**—Where the undertakers are required to supply energy to ordinary consumers (m) they may charge for the energy supplied :

- (1) by the actual amount of energy supplied ; or
- (2) by the electrical quantity contained in the supply (n) ; or
- (3) by such other method as may for the time being be approved by the Electricity Commissioners (o).

The Commissioners may also approve a method of charge to ordinary consumers which consists in part of a fixed or service charge, and in part of a charge for the actual quantity of energy supplied, or the electrical quantity contained in the supply. The fixed charge may include charges for apparatus provided by the undertakers on the consumer's premises. A method of charge of this character may also be authorised by the Commissioners by Special Order (p). [645]

(f) Electricity Supply Regulations, 1934, reg. 39. The recovery of a penalty is not to affect the liability of the undertakers to make compensation. In earlier forms this saving only applied to the "Safety" Regulations. In the absence of this saving, damages could not be recovered. See *Stevens v. Aldershot Gas, Water and District Lighting Co.* (1932), 102 L. J. K. B. 12; Digest (Supp.).

(g) Printed at pp. 580–584 of Will's Electricity Supply, 6th ed.

(h) Electric Lighting (Clauses) Act, 1899, sched., s. 69 (1); 7 Statutes 737.

(i) *Ibid.*, s. 69 (3).

(k) Electricity (Supply) Act, 1919, s. 23; 7 Statutes 771; Electricity (Supply) Act, 1926, s. 48; 7 Statutes 819.

(l) Electricity (Supply) Act, 1926, s. 42; *ibid.*, 817.

(m) An ordinary consumer takes his supply, as part of the general supply, from a distributing main. "General supply" means the general supply of energy to ordinary consumers, including the general supply of energy to public lamps. See definitions, Electric Lighting (Clauses) Act, 1899, sched., s. 1; 7 Statutes 706.

(n) The order provides that the energy supplied is then taken to be the product of the electrical quantity supplied and the declared pressure at the consumer's terminals.

(o) Electric Lighting (Clauses) Act, 1899, sched., s. 31 (1); 7 Statutes 726.

(p) Electricity (Supply) Act, 1926, s. 42; *ibid.*, 817.

*Notice of Method of Charge.*—Before commencing to supply energy through any distributing main, the undertakers must give notice to the local authority (or, if themselves the local authority, by public advertisement), by what method they propose to charge; and may not change the method except after one month's notice to every consumer from the main, and to the local authority (*q*). These notices refer to method of charge only, not to price.

An option may be provided to ordinary consumers to be charged by an alternative method, where a two-part method of charge is authorised (*r*). [646]

*Agreement as to Method of Charge.*—Subject to his right to be charged by one of the statutory methods, the undertakers may agree with a consumer as to the mode in which the charges are to be ascertained (*s*). [647]

*Price to any Consumer.*—Maximum prices for energy supplied are provided in the order or Act authorising the undertaking. The undertakers may not charge any consumer higher prices for energy supplied than the maximum prices so provided, or, in the case of a method of charge approved by the Electricity Commissioners, the price determined by them (*t*).

The price charged for energy supplied must be distinguished from the cost of providing the lines and apparatus required for the supply. An ordinary consumer taking a supply under his statutory rights must pay for lines more than 60 feet from the distributing main, and (if required) guarantee a minimum annual payment for energy taken for two years, of 20 per cent. on the outlay otherwise incurred by the undertakers (*tt*). In other cases the cost of the necessary outlay will be dealt with as agreed.

The undertakers may agree with any consumer as to the price (within the authorised maximum prices) to be charged for energy supplied (*u*). [648]

*Sliding Scale.*—In certain cases the Electricity Commissioners may impose a "sliding scale"—*i.e.* a scale dealing with the relation between the prices to be charged for electricity and the dividends to be paid by the undertakers. They may do this by Special Order, when the power of a local authority to purchase the undertaking is suspended (*a*); or where the undertakers are receiving a supply directly or indirectly from the Central Electricity Board (*b*); or when authorising the supply of a large area (*c*). [649]

*Equality of Treatment. Undue Preference.*—Where a supply is provided in any part of an area for private purposes (*i.e.* for purposes other than street lighting, etc.) every company or person in that part is entitled to a supply on the same terms as any other for a corresponding supply under similar circumstances (*d*); and no undue preference must

(*q*) Electric Lighting (Clauses) Act, 1899, sched., s. 31 (3); 7 Statutes 726.

(*r*) Electricity (Supply) Act, 1926, s. 42 (2); *ibid.*, 817.

(*s*) Electric Lighting (Clauses) Act, 1899, sched., s. 33; *ibid.*, 727.

(*t*) Electric Lighting Act, 1882, s. 20; *ibid.*, 695; Electric Lighting (Clauses) Act, 1899, sched., s. 32 (1); 7 Statutes 726.

(*tt*) Electric Lighting (Clauses) Act, 1899, sched., s. 27.

(*u*) Electric Lighting Act, 1882, s. 20; 7 Statutes 695; Electric Lighting (Clauses) Act, 1899, sched., s. 33; 7 Statutes 727.

(*a*) Electricity (Supply) Act, 1922, s. 14; *ibid.*, 786.

(*b*) Electricity (Supply) Act, 1926, s. 32; *ibid.*, 812.

(*c*) *Ibid.*, s. 39 (2); *ibid.*, 816.

(*d*) Electric Lighting Act, 1882, s. 19; *ibid.*, 695.

be shown in making any agreements for supply (*e*). The character of one supply may be more advantageous to the undertakers than that of another (for instance in regard to quantity, or the times at which the supply is required), and so justify a differentiation in terms (*f*). [650]

*Revision of Prices or of Method of Charge.*—The Minister of Transport may, at intervals of three years, on the representation of the undertakers, or of not less than twenty consumers, or of the local authority, by order vary the prices or methods of charge stated in a special order, or approved by the Minister (*g*). [651]

*Recovery of Charges.*—The undertakers may recover any money due to them for the supply of energy, or for the hire or fixing of a meter, summarily as a civil debt (*h*).

The undertakers may recover any sum due to them, with full costs of suit, in any court of competent jurisdiction (*i*). [652]

*Power to cut off Supply.*—Where a consumer neglects to pay any sum due to the undertakers in respect of his supply, they may cut off the supply until such sum, together with expenses incurred in cutting off, are fully paid (*k*). The expenses of cutting off and reconnecting the supply may be recovered summarily as a civil debt (*l*).

The undertakers may refuse to supply any person whose payments for the supply of energy are in arrear (not being the subject of a *bona fide* dispute), although the payments are due in respect of premises other than those for which the supply is demanded (*m*). [653]

*Incoming Tenant.*—The undertakers may not (as a condition of supply) require an incoming tenant to pay arrears due from his predecessor, unless he has undertaken to do so (*n*). The receiver and manager in a debenture holder's action is not entitled to demand a supply until arrears are paid (*o*). An outgoing tenant must give to the undertakers twenty-four hours' notice of removal, otherwise he becomes liable to pay money accruing due in respect of the supply up to the next reading of the meter, or up to the date when the next occupier demands a supply (*p*). A notice to this effect is to be endorsed on all demand notes for charges. [654]

**Construction of Works.**—The undertakers have a general power to

(*e*) Electric Lighting Act, 1882, s. 20; 7 Statutes 695.

(*f*) *Metropolitan Electric Supply Co. v. Ginder*, [1901] 2 Ch. 799; 20 Digest 207, 47. See also *A.-G. v. Long Eaton U.D.C.*, [1915] 1 Ch. 124, C. A.; 20 Digest 207, 48; and *A.-G. v. Hackney Corpns.*, [1918] 1 Ch. 372, C. A.; 20 Digest 207, 50.

(*g*) Electric Lighting (Clauses) Act, 1899, sched., s. 32 (2); 7 Statutes 727; as amended by the Electricity (Supply) Act, 1922, s. 22 (2) and sched.; 7 Statutes 789.

(*h*) Gasworks Clauses Act, 1871, s. 40, as printed in Appendix to Electric Lighting (Clauses) Act, 1899; 7 Statutes 744; Electric Lighting Act, 1882, s. 12; 7 Statutes 692. See Summary Jurisdiction Act, 1879, ss. 6, 35; 11 Statutes 325, 342.

(*i*) Gasworks Clauses Act, 1871, s. 41; as printed *ibid.*

(*k*) Electric Lighting Act, 1882, s. 21; 7 Statutes 695.

(*l*) Gasworks Clauses Act, 1871, s. 40; as printed in Appendix to Electric Lighting (Clauses) Act, 1899; 7 Statutes 744; Electricity (Supply) Act, 1926, s. 45; 7 Statutes 818.

(*m*) Electric Lighting Act, 1909, s. 18; 7 Statutes 751.

(*n*) Gasworks Clauses Act, 1871, s. 39, as printed in Appendix to Electric Lighting (Clauses) Act, 1899; 7 Statutes 744.

(*o*) *Paterson v. Gas Light and Coke Co.*, [1896] 2 Ch. 476; 25 Digest 476, 40. The position, however, may be different under the terms of a private Act, see e.g. *Granger v. South Wales Electric Power Distribution Co.* (1931), 100 L. J. Ch. 191; Digest (Supp.). A receiver appointed by the court has been held to be an "incoming tenant": *McLintock v. Westminster Electric Supply Corpns.* (1931), 95 J. P. Jo. 374.

(*p*) Electric Lighting Act, 1909, s. 17; 7 Statutes 751.

construct for the purpose of supplying electricity, such works as may be necessary and incidental to such supply (*q*). [655]

*Compensation for Damage.*—The undertakers must make compensation to all persons interested for damage sustained through the execution (not user) of works. In case of difference, the amount is to be determined by an arbitrator appointed by the Minister of Transport (*r*).

Damage sustained through the user of works may be recoverable under the general law of nuisance. [656]

*Generating Stations and Main Transmission Lines.*—The undertakers may not establish a new or extend an existing generating station or main transmission line without the consent of the Electricity Commissioners. Before such consent is refused, or conditions imposed to which the undertakers object, a local inquiry must be held (*s*). The Commissioners may not refuse their consent, in the case of a generating station, if the undertakers prove that they can give an adequate supply at a cost not greater than would be the case if they obtained electricity from a source designated by the Commissioners, unless such refusal is necessary in the interests of the general supply of electricity in the district (*t*). The Commissioners must have regard to the effect of any scheme or proposed scheme of the Central Electricity Board (*u*).

An increase in the capacity of a generating station is an "extension" within these provisions (*a*).

The above prohibitions apply, notwithstanding anything in any special Act or order in force at the passing of the Electricity (Supply) Act, 1919 (*b*).

In the case of the construction of a new generating station not previously authorised, notices must be given as provided in sect. 2 of the Electric Lighting Act, 1909. [657]

*Overhead Lines.*—Undertakers may not, without the express consent of the Minister of Transport, place any electric line above ground, except within premises in their sole occupation or control, and except so much of any service line as is necessarily so placed for the purpose of supply (*c*). The Minister, before giving his consent, must give the local authority an opportunity to be heard. Where it is proposed to place the line along or across any county bridge, or any county road vested in a county council, that council must also be given such an opportunity (*d*).

Overhead lines of undertakers are subject to such regulations as the Electricity Commissioners may prescribe. These regulations are imposed directly by the Commissioners upon individual undertakers, and are in force as from the date of the covering letter of the Commissioners. Overhead lines erected previously may be maintained in accordance with previous Regulations (*e*).

(*q*) Electric Lighting Act, 1882, s. 10; 7 Statutes 691.

(*r*) *Ibid.*, ss. 17, 28; *ibid.*, 694, 697.

(*s*) Electricity (Supply) Act, 1919, ss. 11, 36; *ibid.*, 758, 776.

(*t*) Electricity (Supply) Act, 1922, s. 13; *ibid.*, 785.

(*u*) Electricity (Supply) Act, 1926, s. 18; *ibid.*, 806.

(*a*) *A.-G. v. Ealing Corp.*, [1924] 2 Ch. 545; 20 Digest 200, 15.

(*b*) Electricity (Supply) Act, 1919, s. 11; 7 Statutes 758.

(*c*) Electric Lighting (Clauses) Act, 1899, sched., s. 10 (b); *ibid.*, 711.

(*d*) Electricity (Supply) Act, 1919, s. 21, printed 7 Statutes 768, as amended by Sched. VI. to the Act of 1926. "County road" is substituted for "main road" by L.G.A., 1929, s. 29 (1); 10 Statutes 903.

(*e*) Electricity Supply Regulations, 1934, reg. 15; Overhead Line Regulations, 1931 (El. C. 53 (Revised)), and explanatory memorandum (El. C. 53A); see pp. 585—594 of Will's Electricity Supply, 6th ed.

An application for the consent of the Minister of Transport to the placing of an electric line above ground may be heard simultaneously with an application for "way-leave" (f). [658]

*Breaking up Roads* (g).—The powers of undertakers with regard to the breaking up of roads are in outline as follows :

They may, for the purpose of laying electric lines, break up any streets or bridges in their area of supply that are dedicated to public use, and are repairable by the local authority (h). The expression "local authority" as used in the Electricity (Supply) Acts does not include a county council (in England and Wales) (i).

The order authorising an undertaking may empower the undertakers to break up specific streets dedicated to public use but not repairable by the local authority ; and specific railways (on the level) and tramways where these are upon land dedicated to public use. Otherwise the undertakers can only break up such streets, railways or tramways with the consent of the body responsible for their repairs, or with the written consent of the Electricity Commissioners (k).

The Gasworks Clauses Act, 1847 (l), and the Schedule to the Electric Lighting (Clauses) Act, 1899 (m), lay down conditions (as to notices, approval of plans, execution of works, reinstatement, etc.) under which these powers may be exercised. Provision is also made for the moving of pipes or wires already laid in a street (n) ; and for possible disturbance to adjacent works of other public utility undertakers, or by those undertakers to the works of the electricity undertakers (o). [659]

*Protection to Railways, etc.*—The undertakers may not, in the exercise of their powers, injure the works or obstruct the traffic of any railway or canal (p). Protection is also afforded to wires used for telegraphic, telephonic or electric signalling communication (q). [660]

*Wayleaves.*—Until the passing of the Electricity (Supply) Act, 1919, undertakers had no compulsory power to construct works upon land not dedicated to public use. By sect. 22 of that Act (r), machinery was provided enabling undertakers to place electric lines across private land. Rights so obtained are called "wayleaves," following the marginal title of the section, though the term is inappropriate, as the right may amount to a taking of land, e.g. by the erection of a pylon (rr).

The right extends to the placing of any electric line below ground

(f) Electricity (Supply) Act, 1926, s. 44 (1) ; 7 Statutes 818.

(g) See title BREAKING UP ROADS.

(h) Electric Lighting Act, 1882, ss. 12, 13 ; 7 Statutes 692, 693 ; Gasworks Clauses Act, 1847, ss. 6, 7 ; see 7 Statutes 741.

(i) See the definition of "local authority" in s. 31 of the Electric Lighting Act, 1882, and the schedule therein referred to ; 7 Statutes 698, 700. Where "local authority" is to include a county council, it is expressly so provided—e.g. ss. 14, 15 of the schedule to the Electric Lighting (Clauses) Act, 1899.

(k) Electric Lighting Act, 1882, s. 13 ; 7 Statutes 693 ; Electric Lighting (Clauses) Act, 1899, sched., s. 12 ; 7 Statutes 712.

(l) Ss. 8—12 ; see 7 Statutes 741—743.

(m) Ss. 14—16 ; *ibid.*, 713—716.

(n) Electric Lighting (Clauses) Act, 1899, sched., s. 17 ; *ibid.*, 717.

(o) *Ibid.*, s. 18 ; *ibid.*, 719.

(p) *Ibid.*, s. 19 ; *ibid.*, 720.

(q) *Ibid.*, s. 20 ; *ibid.*

(r) 7 Statutes 768.

(rr) *West Midlands Joint Electricity Authority v. Pitt*, [1932] 2 K. B. 1, C. A., at pp. 30, 34.

across any land, and above ground across any land other than land covered by buildings or used as a garden or pleasure ground (s).

The undertakers must serve notice of their intention upon the owner and occupier of the land, together with a description of the nature and position of the line. If within twenty-one days of service of the notice the owner and occupier fail to give their consent, or attach to their consent terms to which the undertakers object, the undertakers may not construct the line without the consent of the Minister of Transport. The Minister, after giving all parties an opportunity to be heard, may give his consent subject to such terms (including the carrying of any portion of the line underground) as he thinks just, and is to have regard to the effect, if any, on the amenities or value of the land (t).

Existing arrangements for wayleaves may be continued or revised under the same procedure (u).

The pecuniary compensation payable to the owner and occupier in respect of damage sustained through the construction of the works cannot be determined by the Minister as one of the conditions upon which he gives his consent (a). The right to compensation is conferred by sect. 17 of the Electric Lighting Act, 1882 (b), and the amount will be determined by arbitration under that Act, where the undertakers are not a "public authority" within the Acquisition of Land (Assessment of Compensation) Act, 1919 (c); and, in the case of such a "public authority," under the last-named Act.

The provisions of the Lands Clauses Consolidation Act, 1845, as to compulsory purchase, do not apply, being specifically excluded by sect. 12 (1) of the Electric Lighting Act, 1882 (d).

The "wayleave" procedure of sect. 22 of the Act of 1919, applies to the placing of lines across railways or canals; but where it is required to place lines along the course of a railway or canal, the Minister of Transport may refuse his consent, or may refer the question to the Railway and Canal Commission, who may make an order for the placing of the lines subject to such pecuniary terms as the Commission think just (e). [661]

*Acquisition of Land.*—The undertakers may acquire by agreement such lands as may be necessary for the purpose of supplying electricity (f). The Lands Clauses Acts (in so far as they deal with the taking of land by agreement) are applied (g).

Land may be acquired compulsorily for the purpose of a generating station by a special order of the Electricity Commissioners; and in that case the provisions of the Lands Clauses Acts, dealing with the compulsory taking of lands, apply (h).

Local authority undertakers may use for the purposes of their undertaking any lands for the time being vested in them, with the consent of the M. of H., but the lands used by them for those purposes

(s) Electricity (Supply) Act, 1919, s. 22 (1); 7 Statutes 768.

(t) *Ibid.*, Proviso.

(u) Electricity (Supply) Act, 1922, s. 11; 7 Statutes 784.

(a) *West Midlands Joint Electricity Authority v. Pitt*, [1932] 2 K. B. 1, C. A.; Digest (Supp.).

(b) 7 Statutes 694.

(c) 2 Statutes 1176.

(d) 7 Statutes 692. See the *West Midlands* case.

(e) Electricity (Supply) Act, 1919, s. 22 (2); 7 Statutes 768.

(f) Electric Lighting Act, 1882, s. 10; *ibid.*, 691.

(g) *Ibid.*, s. 12; *ibid.*, 692.

(h) Electric Lighting Act, 1909, s. 1; *ibid.*, 744.

are not to exceed five acres, without the consent of the Electricity Commissioners (*i*).

These powers as to land are not, as respects local authority undertakers, affected by the L.G.A., 1933; see sect. 179 (g) and the Seventh Schedule to that Act (*k*). [662]

*Lopping of Trees and Hedges.*—The undertakers may require the lopping of trees or hedges that interfere with the construction, maintenance or working of any electric line owned by them, and the removal of any tree that interferes with the construction or maintenance (but not working) of a transmission line (*l*). [663]

*Abstraction of Water.*—The Minister of Transport may on the representation of the Electricity Commissioners by order authorise the abstraction of water (for condensing purposes) from any river, stream, canal or other source. The order must be a special order if the source is a statutory canal, inland navigation or harbour, or if the rights of riparian owners are affected (*m*). No order may be made authorising the abstraction of water from the reservoir or other works of a statutory water undertaking without the consent of the undertakers, which must not, however, be unreasonably withheld (*n*). [664]

*Support for Works.*—Where works are constructed under compulsory powers conferred by statute for a public purpose, they carry with them the right to all necessary support (vertical or lateral), if provision has been made for compensation (*o*). Compensation for damage sustained by reason of the execution of powers under the Electricity (Supply) Acts is provided for by sect. 17 of the Electric Lighting Act, 1882 (*p*), and sect. 6 of the Gasworks Clauses Act, 1847, as set out in the Appendix to the Electric Lighting (Clauses) Act, 1899 (*q*). Authorised undertakers have accordingly the right to claim full support for lines and works constructed under their statutory rights, subject to payment of compensation (*r*).

An exception is, however, made in the case of mines or minerals lying under or adjacent to any road along or across which any electric line is laid. The right to work such mines or minerals is not to be interfered with (*s*).

Where undertakers have erected supports for an electric line above ground under "wayleave" powers (*t*) they are to be deemed to be persons having an interest in land for the purposes of sect. 8 of the Mines (Working Facilities and Support) Act, 1923 (*u*). This section provides for an application being made through the Board of Trade

(*i*) Electric Lighting (Clauses) Act, 1899, sched., s. 8; 7 Statutes 710.

(*k*) 26 Statutes 404, 509.

(*l*) Electricity (Supply) Act, 1926, s. 34; 7 Statutes 813.

(*m*) Electricity (Supply) Act, 1919, s. 15; *ibid.*, 762.

(*n*) *Ibid.*, s. 15 (1) (cc), inserted by Electricity (Supply) Act, 1926, Sched. VI.; see 7 Statutes 763.

(*o*) *Re Dudley Corpns.* (1881), 8 Q. B. D. 86; 11 Digest 158, 381. As to lateral support, see *per JESSEL, M.R.*, in *Roderick v. Aston Local Board* (1877), 5 Ch. D. 328, at p. 338; 41 Digest 22, 174.

(*p*) 7 Statutes 694.

(*q*) *Ibid.*, 741.

(*r*) See *per Lord HANWORTH, M.R.* in *West Midlands Joint Electricity Authority v. Pitt*, [1932] 2 K. B. 1, at p. 35: and *per SLESSER, L.J.*, *ibid.*, p. 51; Digest (Supp.).

(*s*) Electric Lighting Act, 1882, s. 33; 7 Statutes 699.

(*t*) *I.e.* under the Electricity (Supply) Act, 1919, s. 22; *ibid.*, 768.

(*u*) Electricity (Supply) Act, 1926, s. 44 (2); *ibid.*, 818.

to the Railway and Canal Commission for an order imposing restrictions on the working of minerals required for support (a).

The working of minerals so as to affect works of local authority undertakers is regulated by the P.H.A., 1875 (Support of Sewers), Amendment Act, 1883 (b), which applies the mining "code" contained in ss. 18—27 of the Waterworks Clauses Act, 1847 (c), but apparently subject to the above-mentioned provision as to minerals under or adjacent to roads contained in sect. 33 of the Electric Lighting Act, 1882; see sect. 5 of the Act of 1883 (d).

A summary of the Act of 1883 will be found on pp. 392—394 of Vol. III. [665]

**Liability of Undertakers for Nuisance.** *Where "Nuisance Clause" applies.*—Sect. 81 of the Schedule to the Electric Lighting (Clauses) Act, 1899 (e), provides that nothing in the order [or Act] authorising the undertaking shall exonerate the undertakers from proceedings for nuisance in the event of any nuisance being caused or permitted by them. The undertakers are liable for damage caused by any nuisance (public or private) arising from any of their works to which this section applies (f); and the use of the works can be restrained by injunction (g). It is not necessary to prove negligence on the part of the undertakers (h). The nuisance may arise during the construction of the works or through their use after construction (i). [666]

*Where "Nuisance Clause" does not apply.*—Where sect. 81 of the Schedule to the Act of 1899 does not apply, two cases have to be considered :

(i.) Where works of the undertakers are constructed under their general powers, but the locality of the site is not specified in an Act or order.

(ii.) Where the position of works is so specified.

(i.) Where the position of the works is not specifically authorised, it may be that the undertakers are liable for nuisance caused by or arising from the works (k).

(ii.) Where the site of the works is specifically authorised, no action will lie for damage caused by doing the act for which the works were authorised, so long as it is done without negligence. If by a reasonable exercise of the powers of the undertakers the damage could have been prevented, it is negligence not so to exercise them (l).

For a case where it was held that all reasonable precautions had

(a) See 12 Statutes 187.

(b) 13 Statutes 798.

(c) 20 Statutes 192—196.

(d) 13 Statutes 800.

(e) 7 Statutes 740.

(f) *Shelfer v. City of London Electric Lighting Co.*, [1895] 1 Ch. 287; 20 Digest 209, 67; *Midwood & Co., Ltd. v. Manchester Corpn.*, [1905] 2 K. B. 597; 20 Digest 212, 76.

(g) Save in the case of a generating station on land the use of which for the purpose is authorised by order made after the year 1919: Electricity (Supply) Act, 1919, s. 10; 7 Statutes 758.

(h) *Midwood & Co., Ltd. v. Manchester Corpn.*, *supra*; *Charing Cross, West End and City Electricity Supply Co. v. London Hydraulic Power Co.*, [1913] 3 K. B. 442; affirmed, [1914] 3 K. B. 772; 38 Digest 50, 289.

(i) *Shelfer v. City of London Electric Lighting Co.*, *supra*; *Jordeson v. Sutton, Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217; 25 Digest 486, 92.

(k) *Per Lord HALSBURY, Shelfer v. City of London Electric Lighting Co.*, *supra*, at p. 309.

(l) *Geddis v. Bann Reservoir Proprietors* (1878), 3 App. Cas. 430. *Per Lord BLACKBURN* at p. 455; 13 Digest 399, 1223. See also *Hammersmith and City Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 Digest 24, 132.

not been taken to prevent nuisance caused by the working of a generating station that had been specifically authorised, see *Manchester Corporation v. Farnworth* (*m*). [667]

*Restraint by Injunction*.—Where the acquisition or use of land for the purposes of a generating station has been authorised (*n*) by order of the Electricity Commissioners after December 23, 1919, the use of the land for that purpose cannot be restrained by injunction (*o*). But where the authorisation was given by a local Act and a nuisance is caused by the negligence of the undertakers, an injunction can be obtained (*p*). [668]

**Protection of Supply and Property of Undertakers. Improper Use of Electricity.**—The fraudulent diversion or use of electricity is punishable under sect. 10 of the Larceny Act, 1916 (*q*), as simple larceny. Penalties are provided in the case of a consumer connecting with any line of the undertakers without their consent, or fraudulently injuring or altering the index of a meter, or supplying to any other person energy supplied by the undertakers, or using the energy improperly or fraudulently; and the undertakers may cut off the supply of the person offending (*r*). [669]

*Injury to Lines, etc., of Undertakers*.—A consumer fraudulently or negligently injuring any lines or fittings belonging to the undertakers is liable to a penalty, and to the cutting off of his supply, as well as to damages (*s*).

Any person wilfully injuring a work of the undertakers for supplying electricity, or extinguishing public lamps, or wasting electricity, is liable to penalties and damages (*t*). Careless or accidental injury to any line, pillar or lamp of the undertakers is punishable by fine by way of satisfaction for the damage done (*u*).

The cutting of an electric line with intent to cut off any supply is a felony punishable with penal servitude for not more than five years, or hard labour for not more than two years (*x*). [670]

*Property of Undertakers on Consumers' Premises*.—Electric lines, fittings, etc., provided by the undertakers upon consumers' premises are deemed to be part of the authorised undertaking (*a*). They are not to be subject to distress for rent, or to be taken in execution (*b*); and, even though fixed to the premises or to the soil, are, if clearly marked as belonging to the undertakers, to continue their property, and to be removable by them (*c*). [671]

*Power of Entry*.—An officer appointed by the undertakers may at all reasonable times enter any premises supplied by them, in order to inspect apparatus, or to read meters (*d*). Where the supply is no longer required, or where the undertakers are authorised to cut it off, the officer may enter for the purpose of removing any apparatus belonging

(*m*) [1930] A.C. 171; Digest (Supp.).

(*n*) Under Electric Lighting Act, 1909, s. 1; 7 Statutes 744.

(*o*) Electricity (Supply) Act, 1919, s. 10; 7 Statutes 758.

(*p*) *Manchester Corp'n. v. Farnworth*, ante.

(*q*) 4 Statutes 820.

(*r*) Gasworks Clauses Act, 1847, s. 18, as printed in Appendix to Electric Lighting (Clauses) Act, 1899; 7 Statutes 743.

(*s*) Gasworks Clauses Act, 1871, s. 38, as printed *ibid.*

(*t*) Gasworks Clauses Act, 1847, s. 19, as printed *ibid.*

(*u*) *Ibid.*, s. 20, as printed *ibid.*

(*w*) Electric Lighting Act, 1882, s. 22; 7 Statutes 695.

(*a*) Electricity (Supply) Act, 1919, s. 23(2); *ibid.*, 771.

(*b*) Electric Lighting Act, 1882, s. 25; *ibid.*, 696.

(*c*) Electric Lighting Act, 1909, s. 16; *ibid.*, 750.

(*d*) Electric Lighting Act, 1882, s. 24; *ibid.*, 696.

to the undertakers, repairing all damage caused (e). No penalty is provided for hindering such an officer, as in the Gasworks Clauses Acts, and the remedy of the undertakers, if access is refused, will be by application to the county court for damages for the obstruction of a statutory right and for an order for entry (ee). Having a statutory right to enter, an officer may attempt to do so peaceably; but must not use force. [672]

**Electric Inspectors, Meters, etc.** *Inspectors.*—Electric inspectors are appointed by the local authority, where the undertakers are a company, or by the Electricity Commissioners where the local authority are themselves the undertakers. The Commissioners also appoint, on the application of the undertakers or of any consumer, if the local authority do not make an appointment (f).

The duties of an electric inspector are: (1) the testing of undertakers' lines, works, and supply; (2) certification and examination of meters; (3) any other duty required by the special order or regulations of the Electricity Commissioners (g).

The local authority with the approval of the Commissioners (or the Commissioners, if they make the appointment) may prescribe the manner of performance of an inspector's duties and the fees to be taken (g), and they must pay his salary (h). The expenses of an inspector in tests and inspections are paid by the undertakers, unless his report shows that a consumer was in default (i). [673]

*Meters.*—The amount of the supply to an ordinary consumer is (unless otherwise agreed) to be measured by a meter certified by an electric inspector, who may be required to examine any meter used for this purpose, and the manner of its fixing (k). The undertakers must, if required, supply and fix the meter. Notice must be given before connection or disconnection by either party (l). The undertakers may let meters for hire, and must keep such meters in repair at their own expense (m). For this purpose they have a right of access to the meter. Any dispute as to the correctness of a meter is to be determined by an electric inspector; and, subject to this, the register of the meter is conclusive evidence of the value of the supply in the absence of fraud (n). [674]

*Testing Stations.*—Company undertakers must establish at their own cost such testing stations for the purpose of testing the supply in their distributing mains as the local authority require (o). The reasonableness of the requirement is subject to arbitration.

Local authority undertakers must provide such testing stations as a court of summary jurisdiction may, upon the application of any ten consumers, direct (o).

Electric inspectors may examine the readings at a testing station or other premises, and may test the instruments in use (p). [675]

**Purchase of Undertaking by Local Authority.** *Right of Local Authority to Purchase.*—A local authority have the right to purchase

(e) Electric Lighting Act, 1882, s. 24; 7 Statutes 696.

(ee) The county court has no jurisdiction unless damages are claimed (*R. v. Cheshire County Court Judge*, [1921] 2 K. B. 694, C. A.; 13 Digest 472, 212).

(f) Electric Lighting (Clauses) Act, 1890, sched., s. 35; 7 Statutes 727.

(g) *Ibid.*, s. 36. (h) *Ibid.*, s. 37. (i) *Ibid.*, s. 48.

(k) *Ibid.*, ss. 49—51, as altered by the Electric Lighting Act, 1909 (see 7 Statutes 731).

(l) *Ibid.*, s. 53, as altered by Electric Lighting Act, 1909 (see 7 Statutes 732).

(m) *Ibid.*, s. 56. (n) *Ibid.*, s. 57.

(o) *Ibid.*, s. 41. (p) *Ibid.*, s. 43.

such portion of an authorised undertaking as lies within their borough or district, at the expiration of forty-two years from the confirmation of the order, or the passing of the Act, authorising the undertaking, unless a shorter period is specified in the order or Act (*q*). If the right is not then exercised, it may be subsequently exercised at intervals of ten years (or such less period as may be provided (*q*)).

The powers of purchase may, if the local authority agree, be suspended by special order of the Electricity Commissioners, upon conditions that may include the imposition of a sliding scale relating profits to charges (*r*).

A local authority having power to purchase a part of the undertaking of a company may, with the consent of the Electricity Commissioners, transfer that power to another local authority entitled to purchase part of the same undertaking (*s*).

Where there is no joint electricity authority, the consent of the Electricity Commissioners is required before the right of purchase is exercised (*t*). [676]

*Terms of Purchase*.—These are prescribed (*u*) but may be varied by special order of the Electricity Commissioners in manner agreed upon between the undertakers and the local authority (*x*). The terms of purchase may also be varied, at any time within ten years of the next occurring date of purchase, by agreement approved by the Electricity Commissioners (*a*).

Where the statutory terms are in force, the local authority must pay the value at the date of purchase of all lands, buildings and plant suitable to and used by the undertakers for the purposes of their undertaking within the authority's borough or district (*b*). The value is to be their fair market value, having regard to their state of repair, readiness for working, suitability, and any loss caused by severance. No addition is allowed for compulsory purchase, goodwill or profits. In case of difference, the value is to be determined by arbitration (*b*).

Works outside the district, but used solely for the supply of the district, are deemed to be within it, or where more than one district is concerned, within such district as the Electricity Commissioners determine (*c*). Similar provisions apply to works authorised for the supply of premises outside the district (*c*).

If the undertakers have ceased to generate electricity and are taking a supply in bulk from the Central Electricity Board or other source approved by the Electricity Commissioners, the local authority must pay a further sum representing capital expended upon generating plant thereby superseded, as to which the decision of the Electricity Commissioners is final (*d*).

Any other question relating to the purchase, including the date of transfer, may be determined by the Minister of Transport (*e*).

From the date of transfer, the lands, buildings, works and plant of the undertakers vest in the local authority freed from all debts or

(*q*) Electric Lighting Act, 1888, s. 2 ; 7 Statutes 702.

(*r*) Electricity (Supply) Act, 1922, s. 14 ; *ibid.*, 786.

(*s*) Electric Lighting Act, 1909, s. 7 (2) ; *ibid.*, 749.

(*t*) Electricity (Supply) Act, 1919, s. 13 (3) ; *ibid.*, 762.

(*u*) Electric Lighting Act, 1888, s. 2 ; *ibid.*, 702.

(*x*) *Ibid.*, s. 3 ; *ibid.*, 703.

(*a*) Electricity (Supply) Act, 1926, s. 41 ; *ibid.*, 817.

(*b*) Electric Lighting Act, 1888, s. 2 ; *ibid.*, 702.

(*c*) Electric Lighting Act, 1909, ss. 6, 7 ; *ibid.*, 747, 748.

(*d*) Electricity (Supply) Act, 1926, s. 40 ; *ibid.*, 816.

(*e*) Electric Lighting Act, 1888, s. 2 ; *ibid.*, 702.

mortgages, and the powers of the undertakers cease, and vest in the local authority (f).

The Acquisition of Land (Assessment of Compensation) Act, 1919, will not apply to the valuation of land purchased with the undertaking, the terms of purchase being prescribed; see sect. 10 (1) of that Act (g).

The terms of purchase prescribed by sect. 43 of the Tramways Act, 1870 (h), are very similar to the above, and cases on that section may be usefully consulted (i). [677]

*Special Conditions for Large Areas of Supply.*—Where a company are authorised by special order to supply an area including the whole of the districts of two or more local authorities, special conditions of purchase apply, if the Electricity Commissioners consider that the area is large enough (k). The purchase is to be made by the local authorities concerned, acting through a joint committee or board constituted under sect. 8 of the Electric Lighting Act, 1909 (l); unless a joint electricity authority has been constituted whose district includes the area of supply (or the main part of that area) in which case such authority has the right of purchase (m). The right arises fifty years after the confirmation of the special order, and subsequently at intervals of ten years (unless a shorter period is specified in the order). Valuation is to be on a different principle from that previously laid down. Instead of the market value at the date of purchase, the authorities are to pay the capital expended upon lands, buildings or plant in use or available for use at the time of purchase, less depreciation on a scale to be determined by special order of the Electricity Commissioners (n). [678]

**Finance. Expenses of Local Authority Undertakers.**—Expenses incurred under the Electricity (Supply) Acts by undertakers who are the council of a municipal borough or urban district are defrayed out of the general rate fund of the borough or district, as liabilities falling to be discharged by the council (o).

Expenses so incurred by undertakers who are a R.D.C. are similarly defrayed out of the general rate fund, and are deemed to be special expenses (p). [679]

*Borrowing Powers of Undertakers.*—Local authority undertakers may borrow for the purposes of the Electricity (Supply) Acts as provided in Part IX. of the L.G.A., 1933 (q). The consent of the Electricity Commissioners is required as sanctioning authority, except in the case of temporary loans for certain purposes (r). A description of the purposes for which loans are sanctioned and the longest periods allowed will be found in the title ELECTRICITY COMMISSIONERS, *ante*, pp. 271, 272.

(f) Electric Lighting Act, 1888, s. 2; 7 Statutes 702.

(g) 2 Statutes 1183.

(h) 20 Statutes 24.

(i) See also *Oxford Corp. v. Oxford Electric Co., Ltd.*, for a case on special terms of purchase in a provisional order of 1890; (1930), 94 J. P. 86; (C. A.) 229; Digest (Supp.).

(k) Electricity (Supply) Act, 1926, s. 39; 7 Statutes 815.

(l) 7 Statutes 749.

(m) Electricity (Supply) Act, 1926, s. 39; 7 Statutes 815.

(n) L.G.A., 1933, ss. 185, 188; 26 Statutes 407, 408. Except as to London the Act repeals s. 7 of the Electric Lighting Act, 1882, in part.

(o) L.G.A., 1933, ss. 190, 191; 26 Statutes 409, 410; Electric Lighting Act, 1882, s. 7; 7 Statutes 690; as in part repealed by the first-mentioned Act.

(p) S. 8 of the Electric Lighting Act, 1882; 7 Statutes 690. That section (except the first twenty-one words) and part of the sched. to that Act are repealed outside London, by L.G.A., 1933.

(q) L.G.A., 1933, ss. 195, 215, 218; 26 Statutes 412, 422, 424,

Company undertakers may borrow money on mortgage of their undertaking (*r*). If the undertaking be sold or transferred, no such mortgage is a charge on the undertaking, but attaches to the purchase money (*r*). A mortgagee cannot obtain a sale of the undertaking (*s*). [680]

*Application of Revenue of Local Authority Undertakers.*—The purposes to which local authority undertakers are to apply the revenue arising from their undertaking is prescribed (*t*), but the provisions do not extend to a company's undertaking. Shortly, these purposes are : (1) working and maintenance expenses, (2) interest on loans, (3) sinking fund instalments, (4) other expenses not properly chargeable to capital, and (5) the creation of a reserve fund to meet deficiencies in income or extraordinary claims. The net surplus remaining in any year, and the income from the reserve fund (if the fund has reached one-tenth of the aggregate capital expenditure on the undertaking) must be applied in the reduction of the charges for electricity, in the reduction of borrowed capital, in paying expenses chargeable to capital (*u*), or in aid of the local rate ; but not more may be applied in aid of the rate in any year than  $1\frac{1}{2}$  per cent. of the outstanding debt, and no surplus may be so applied unless the reserve fund exceeds one-twentieth of the aggregate capital expenditure on the undertaking. These provisions are not affected by Part VIII (Expenses) of the L.G.A., 1933 ; see s. 194 of that Act. [681]

*Accounts and Audit.*—An annual statement of accounts must be prepared on or before March 25 (company undertakers) or June 30 (local authority undertakers) in each year in the form prescribed by the Electricity Commissioners, and a copy forwarded to the Commissioners (*a*). The undertakers must keep copies of this annual statement at their office, and sell the same to any applicant at a price not exceeding 1s. a copy (*a*). The accounts of company undertakers are to be audited by persons appointed by the Electricity Commissioners (*b*). The accounts of local authority undertakers are subject to a like audit as their other accounts (*c*), viz. in boroughs by the borough auditors, or by professional or by district auditors, and in urban and rural districts by district auditors. [682]

*Contribution to Expenses of Electricity Commissioners.*—Authorised undertakers must contribute to the expenses of the Electricity Commissioners in proportion to the number of units sold by them in the relevant year (*d*). The number of units sold is defined as the number of units generated or purchased, less those used in the generating station, those lost in transmission or distribution, and those sold in bulk to authorised undertakers (*e*).

(*r*) Electric Lighting (Clauses) Act, 1899, sched., s. 78 ; 7 Statutes 740.

(*s*) *Gardner v. London, Chatham and Dover Rail. Co.* (No. 1) (1867), 2 Ch. App. 201 ; 10 Digest 1181, 8375.

(*t*) Electric Lighting (Clauses) Act, 1899, sched., s. 7 ; 7 Statutes 709, there printed as amended by Electricity (Supply) Act, 1926, s. 43.

(*u*) For this application of surplus the consent of the Electricity Commissioners is required.

(*a*) Electric Lighting Act, 1882, s. 9 ; 7 Statutes 691 ; as amended by Electric Lighting Act, 1909, s. 12 ; 7 Statutes 750.

(*b*) Electric Lighting (Clauses) Act, 1899, sched., s. 6 ; 7 Statutes 709.

(*c*) L.G.A., 1933, ss. 219, 239, 240 ; 26 Statutes 424, 434, 435.

(*d*) Electricity (Supply) Act, 1919, s. 29 (2), as amended by Electricity (Supply) Act, 1922, s. 7 (2) ; 7 Statutes 773, 783.

(*e*) Electricity (Supply) Act, 1922, s. 7 (2) ; 7 Statutes 783.

The apportionment of the expenses of the Commissioners incurred in any alteration of frequency required by the Central Electricity Board is on a different basis—namely, the revenue received from the sale of electricity other than electricity sold in bulk to authorised undertakers (f).

Authorised undertakers may be required by the scheme constituting a joint electricity authority to contribute to the administrative expenses of the joint authority (g). [683]

**Miscellaneous Provisions.** *Restrictions on Association of Undertakers.*—Undertakers may not, in general, acquire the undertaking of, or associate themselves with, other authorised undertakers, except under a Parliamentary sanction (h). But they are not prohibited from taking a supply in bulk from any company or person authorised to give such a supply (i).

Undertakers may be authorised to give a supply in bulk by departmental order of the Electricity Commissioners, where no new powers of breaking up streets are required; otherwise a special order is necessary (k). [684]

*Arrangements for Mutual Assistance.*—In districts for which a joint electricity authority has not been constituted, arrangements may be made between undertakers for mutual assistance with the consent of the Electricity Commissioners (l). Such arrangements may include the giving and taking of a supply, and its distribution; the management and working of generating stations, or any part of the undertakings; the provision of capital and the division of receipts. The parties may be authorised by departmental order of the Commissioners to exercise such powers (including the power to break up roads) as may be necessary to carry the arrangements into effect (l).

Subject to certain limitations the Electricity Commissioners may require such arrangements to be made (m). [685]

*Joint Committee of Local Authorities.*—Two or more local authorities may be authorised by special order to exercise jointly, through a joint committee or board, or otherwise, all or any of the powers of undertakers under the Electricity (Supply) Acts, 1882 to 1935, or under any existing order, for an area consisting of the whole or parts of their districts (n). The consent of the M. of H. is necessary. In this way original powers may be conferred, or powers transferred from undertakers already authorised by order, but not from undertakers authorised by special Act. [686]

*Divestiture of Powers.*—Authorised undertakers may not divest themselves of the powers conferred upon them unless authorised by an order or special Act (o). Although local authority undertakers are

(f) Electricity (Supply) Act, 1926, s. 9 (3), proviso; 7 Statutes 800.

(g) Electricity (Supply) Act, 1922, s. 5 (4); *ibid.*, 782.

(h) Electric Lighting (Clauses) Act, 1899, sched., s. 3; *ibid.*, 707.

(i) Electric Lighting Act, 1909, s. 20; *ibid.*, 751.

(k) *Ibid.*, s. 4; *ibid.*, 746.

(l) Electricity (Supply) Act, 1919, s. 19, and s. 32 (3) as amended by Sched. VI. to the Act of 1926; 7 Statutes 766, 774. See Memorandum of Procedure, 1924, printed on p. 553 of Will's Electricity Supply, 6th ed.

(m) *Ibid.*, s. 19; 7 Statutes 766; Electricity (Supply) Act, 1922, s. 13 (b); 7 Statutes 785.

(n) Electric Lighting Act, 1909, s. 8; 7 Statutes 749.

(o) *Ibid.*, s. 14; *ibid.*, 750.

empowered by sect. 11 of the Electric Lighting Act, 1882 (*p*), to contract for the execution of works and the supply of electricity, they may not contract for the execution of their powers by any other body (*q*).

Authorised undertakers may transfer their undertaking to a joint electricity authority. In the case of local authority undertakers the consent of the Electricity Commissioners is required (*r*). [687]

*Responsibility for Accidents.*—The undertakers are answerable for all accidents, damages and injuries caused by any of their works through the act or default of themselves or their employees (*s*). The responsibility of undertakers under a similar provision in sect. 55 of the Tramways Act, 1870 (*t*), has been held not to extend to cases in which no negligence is proved (*u*). Whether it is necessary to prove negligence in a claim under sect. 77 of the Schedule to the Act of 1899, has not been determined. MATHEW, L.J., gave it as his opinion, in the case of *Midwood & Co., Ltd. v. Manchester Corporation* (*a*), that negligence need not be proved ; but that case was decided on the ground of nuisance. See also the title ACCIDENTS at p. 7 of Vol. I. [688]

*Notice of Accidents.*—The undertakers are required to send to the Electricity Commissioners notice of any accident by explosion or fire, or such as to cause loss of life or personal injury, occurring on or in connection with their works or circuits. The Commissioners may appoint an inspector to inquire into the cause (*b*).

Notice of accidents in electrical stations must also be given to the factory inspector under the Notice of Accidents Acts, 1894 and 1906 (*c*). [689]

*Local Authority Undertakers : Protection from Personal Liability.*—In the case of local authority undertakers, their members and servants are protected from personal liability in respect of any act done or contract entered into by them *bona fide* for the purpose of executing the undertakers' statutory powers (*d*). [690]

*Actions against Local Authority Undertakers.*—Any action against local authority undertakers for any act done or default made in the execution of their statutory powers must be commenced within six months of the act or default, and is otherwise subject to the Public Authorities Protection Act, 1893 (*e*). This Act will be dealt with in the title PUBLIC AUTHORITIES PROTECTION. [690a]

*Exemption of Agreements from Stamp Duty.*—Agreements for the supply of electricity are exempt from stamp duty, where the agreement provides for payment for electricity consumed (*f*). But where the

(*p*) 7 Statutes 691.

(*q*) *Sudbury Corp. v. Empire Electric Light and Power Co., Ltd.*, [1905] 2 Ch. 104 ; 20 Digest 198, 4.

(*r*) Electricity (Supply) Act, 1919, s. 13 (1), (4) ; 7 Statutes 761, 762.

(*s*) Electric Lighting (Clauses) Act, 1899, sched., s. 77 ; *ibid.*, 739.

(*t*) 20 Statutes 29.

(*u*) *Brocklehurst v. Manchester, etc., Steam Tramways Co.* (1886), 17 Q. B. D. 118 ; 38 Digest 26, 138.

(*a*) [1905] 2 K. B. 597, at p. 610 ; 38 Digest 50, 288.

(*b*) Electric Lighting (Clauses) Act, 1899, sched., s. 38 ; 7 Statutes 728.

(*c*) 11 Statutes 506 ; 12 Statutes 73.

(*d*) Electric Lighting (Clauses) Act, 1899, sched., s. 9 ; 7 Statutes 711 ; incorporating the P.H.A., 1875, s. 265 ; 13 Statutes 734. In London orders, the incorporated section is s. 124 of the P.H. (London) Act, 1891 ; 11 Statutes 1092.

(*e*) 13 Statutes 455 ; the act or default must be in *bona fide* intended execution of a statutory duty (see *Scammell and Nephew v. Hurley*, [1929] 1 K. B. 419 ; Digest (Supp.).

(*f*) Electric Lighting Act, 1909, s. 19 ; 7 Statutes 751.

agreement provides for minimum payments at stated intervals, duty is payable on a bond (g). [691]

*Compensation for Deprivation of Employment.*—Officers or servants injuriously affected by any transfer of the whole or part of an undertaking, or by undertakers ceasing to operate or changing their method of operation in pursuance of a district scheme for the improvement of supply or of an agreement or arrangement for mutual assistance, under or in consequence of the Electricity (Supply) Act, 1919, are entitled to compensation in the circumstances and on the conditions laid down in sect. 16 of that Act, as subsequently amended (h). The officer or servant must prove his loss or injury to the satisfaction of a referee or referees appointed by the Minister of Labour; but the question whether the transfer was made, or the cessation or change was in pursuance of a scheme, agreement or arrangement, under or in consequence of the Act of 1919, is to be determined by the Electricity Commissioners. [692]

*Special Provisions in Orders and Acts.* IN ORDERS.—A special clause is often inserted for the protection of county bridges. In its most recent form it preserves to the county council the right to alter or repair any bridge upon which a work authorised by the order is constructed. The undertakers are to carry out at their own expense any temporary works required to maintain their supply during the alteration or repairs (i). [693]

A clause known as the "Bermondsey" (or later the "Northumberland") clause used often to be inserted in orders applied for by local authorities, with the object of ensuring that revenue would cover expenditure, and that no contribution from the local rates would be required. The clause did not prove altogether satisfactory, and the Electricity Commissioners have settled a revised form which in suitable cases may be inserted in orders authorising the establishment of new undertakings by local authorities, when asked for by large ratepayers (k). [694]

IN LOCAL ACTS.—While the Electricity Commissioners cannot vary any of the provisions of the Electricity (Supply) Acts, 1882 to 1935, in conferring powers upon undertakers by order, Parliament is not similarly restricted in conferring powers by a local Act. The following are examples of provisions that have been included in such Acts:

- (i.) Empowering the undertakers to break up any street laid out or made, whether dedicated to public use or not (l).
- (ii.) Authorising the undertakers to allow discount for prompt payment of charges (m).
- (iii.) As to the time when erroneous registration of a faulty meter is deemed to commence (n).
- (iv.) Limiting the maximum power that may be demanded on extraordinary occasions, otherwise than on special terms (o).

(g) *County of Durham Electrical Power Distribution Co. v. Commissioners of Inland Revenue*, [1909] 2 K. B. 604; 20 Digest 207, 45.

(h) Electricity (Supply) Acts, 1919, s. 16; 1922, s. 21 (amended in Sched. VI. of the Act of 1926); 1928, s. 1; 1933, ss. 1 and 2; 7 Statutes 764, 788, 826; 26 Statutes 137. See also Vol. III at p. 334.

(i) For form of clause, see Will's Electricity Supply, 6th ed., p. 670.

(k) For form of clause, see *ibid.*, p. 671.

(l) Brighton Corpn. Act, 1931, s. 146 (21 & 22 Geo. 5, c. cix.).

(m) *Ibid.*, s. 138.

(n) *Ibid.*, s. 158.

(o) *Ibid.*, s. 151.

- (v.) Empowering the undertakers to discontinue the supply of electricity to a consumer supplied under agreement, where he uses it contrary to the agreement (*p*).
- (vi.) Imposing a penalty on a consumer using for lighting purposes electricity supplied for power (*q*).
- (vii.) Exempting generating stations and sub-stations of the undertakers from local building bye-laws (*r*).
- (viii.) Empowering the undertakers to supply electricity in bulk outside their area of supply to other undertakers, or to take a supply from such undertakers (*s*). [695]

#### JOINT ELECTRICITY AUTHORITIES

**Separate Electricity District.**—A separate electricity district may be constituted by the Electricity Commissioners where it appears to them that the existing organisation for the supply of electricity in the areas included in the district should be improved, and that a joint electricity authority should be established for the district (*t*). [696]

**Scheme for Electricity District.**—The Electricity Commissioners may formulate a scheme for improving the organisation for supply in an electricity district, and for the establishment of a joint electricity authority therein, after giving notice of their intention to constitute the district and to formulate a scheme, and after consultation with the authorised undertakers in the district (*u*). A local inquiry must be held.

The scheme is brought into force by an order of the Commissioners, confirmed by the Minister of Transport, and approved by resolution of each House of Parliament (*a*). [697]

**Joint Electricity Authority.**—A joint electricity authority must be representative of authorised undertakers in the electricity district, either with or without representatives of the county council, local authorities, large consumers and other interests, including persons employed in the industry (*b*). The duty of the joint authority is to provide or secure the provision of a cheap and abundant supply of electricity (*c*) ; they are undertakers for the purposes of the Electricity (Supply) Acts, and may supply electricity within the electricity district, subject to limitations as to supply in the areas of authorised distribution or power companies (*d*). The Schedule to the Electric Lighting

(*p*) Brighton Corpn. Act, 1931, s. 160.

(*q*) Cleethorpes U.D.C. Act, 1928, s. 62 (18 & 19 Geo. 5, c. lxxvi.).

(*r*) Wolverhampton Corpn. Act, 1925, s. 44 (15 & 16 Geo. 5, c. cxxiii.).

(*s*) Taunton Corpn. Act, 1931, s. 183 (21 & 22 Geo. 5, c. cii.).

(*t*) Electricity (Supply) Act, 1926, s. 36, replacing s. 5 of the Act of 1919 ; see 7 Statutes 756. The constitution of the district is effected by the order for the scheme next described. The establishment of a joint electricity authority was not a condition of the constitution of an electricity district under the Act of 1919. Nine electricity districts have (1934) been constituted.

(*u*) *Ibid.* Under the Acts of 1919 and 1922 the scheme might provide for the setting up of an advisory committee or board without executive powers in lieu of a joint electricity authority. This was done in four cases (S.E. Lancs, S.W. Midlands, Mid. Lancs, E. Midlands).

(*a*) Electricity (Supply) Act, 1919, s. 7 ; 7 Statutes 757.

(*b*) *Ibid.*, s. 6 (1), as amended by s. 20 of the Act of 1922 ; see 7 Statutes 756.

(*c*) *Ibid.*, s. 8 ; 7 Statutes 757.

(*d*) *Ibid.*, s. 12 (1) ; *ibid.*, 759, as amended by s. 16 of the Act of 1922.

(Clauses) Act, 1899, applies to them as modified by their constituting order (e). The Electricity Commissioners may by order impose upon a joint electricity authority an obligation to supply on specified terms and conditions as to price and otherwise (f). The scheme may provide for the exercise by the joint authority of any powers of authorised undertakers in the district, or for the transfer of undertakings to the authority by agreement (g); and the joint authority have a general power of acquiring by agreement, and with the consent of the Electricity Commissioners, undertakings or parts of undertakings of authorised undertakers in the district, or any generating station or main transmission lines; and of using main transmission lines by agreement (h).

A joint authority have such powers and duties with regard to the construction of generating stations, main transmission lines and works as are conferred or imposed upon them by the scheme (i). Any right to purchase the undertaking of any authorised distributors in the district that is vested in a local authority may be transferred to the joint electricity authority by the order constituting them or by an amending order (k). The joint authority may be authorised by the same order or by special order to exercise and perform their powers and duties through any authorised undertakers (l).

It will be observed that the joint electricity authority have no power to control authorised undertakers in their district. [698]

**Finance.**—A joint electricity authority may borrow money, with the consent of the Electricity Commissioners, on the security of their undertaking and revenues (m). Authorised undertakers in the district of a joint electricity authority, or the recipient of a supply from the authority, may lend money to the authority or subscribe for their securities, or guarantee the interest on their loans (n). County councils, and borough or district councils where the borough or district has a population of more than 50,000, even if they are not authorised undertakers or in receipt of a supply, may exercise the powers above-mentioned with the consent of the M. of H., to a limit of an annual liability of a rate of 1d. in the pound, or, where the council are authorised undertakers, the estimated annual amount of any capital charges from which the council will be relieved by taking a supply in bulk from the authority (o). Borrowing powers for the payment of such contributions by councils who are authorised undertakers are exercisable, with the consent of the Electricity Commissioners, under sect. 5 (2) of the Act of 1922 (p). Originally the sub-sect also allowed councils who were not authorised undertakers to borrow with the consent of the M. of H., but paras. (a) and (c) of the sub-sect. were repealed (outside London)

(e) Electricity (Supply) Act, 1919, s. 12 (2); 7 Statutes 761. Ss. 2, 3 of the Electric Lighting Act, 1888 (as to the right of the local authority to purchase), are excluded by s. 12 (2).

(f) *Ibid.*, s. 12 (3); 7 Statutes 761.

(g) *Ibid.*, s. 6 (1); *ibid.*, 756.

(h) *Ibid.*, ss. 9, 13; 7 Statutes 758, 761; Electricity (Supply) Act, 1922, s. 9; 7 Statutes 784.

(i) Electricity (Supply) Act, 1919, s. 8 (1); 7 Statutes 757.

(k) *Ibid.*, s. 13, as amended by s. 50 and Sched. VI. to the Act of 1926; 7 Statutes 761.

(l) Electricity (Supply) Act, 1922, s. 15; 7 Statutes 786.

(m) *Ibid.*, s. 1; *ibid.*, 778.

(n) *Ibid.*, s. 5; *ibid.*, 780.

(o) *Ibid.*

(p) 7 Statutes 781.

by the L.G.A., 1933, and such councils outside London will in future borrow (if they are not authorised undertakers), under sect. 195 of that Act (q).

The scheme constituting a joint electricity authority may authorise or require authorised undertakers represented on the authority to contribute to the authority's administrative expenses (r). [699]

**Joint Authorities Set up under Act of 1919.**—The reorganisation and extension of the supply of electricity contemplated in the Electricity (Supply) Act, 1919, did not take place to any large extent owing to the want of compulsory powers to enforce compliance upon existing undertakings. The organisation of the generation of supplies is now being effected by the Central Electricity Board under the Electricity (Supply) Act, 1926.

Four joint electricity authorities have been constituted (1935) (s) under the Act of 1919. [700]

#### THE CENTRAL ELECTRICITY BOARD

The Central Electricity Board was established by sect. 1 of the Electricity (Supply) Act, 1926 (t). The Board are under an obligation to supply (directly or indirectly) to authorised undertakers (u) such electricity as they require, as soon as the Board have notified that they are in a position to do so, in a particular area (a). The Act provides for the fixing of the price to be charged (b).

The powers and duties of the Board are described in the title **CENTRAL ELECTRICITY BOARD** on pp. 5—15 of Vol. II, but have recently been extended as to arrangements with authorised undertakers and supplies to railway companies by sects. 1, 3, 4, of the Electricity (Supply) Act, 1935. [701]

#### POWER COMPANIES

**Characteristics.**—A power company is a company authorised by special Act to supply electricity for power (c), or to supply authorised distributors and lighting authorities with electricity in bulk. The company may be authorised to supply electricity for lighting, for subsidiary purposes only, as defined in the special Act.

The definition of a "power company" in sect. 36 of the Electricity (Supply) Act, 1919 (d), does not mention an area of supply. To be "authorised undertakers," however, the company must be empowered to supply only within a limited area; and in fact all Power Acts do so limit the powers conferred, the area of supply being usually large.

A power company may be constituted authorised distributors, for portions of their power area, by special order of the Electricity Commissioners obtained by the ordinary procedure. [702]

(q) 26 Statutes 412.

(r) Electricity (Supply) Act, 1922, s. 5 (4); 7 Statutes 782.

(s) North Wales and South Cheshire (acting through a power company), London and Home Counties, West Midlands, North-West Midlands.

(t) 7 Statutes 792.

(u) Subject to a limitation in the case of supply to authorised undertakers in the area of a power company, see s. 10 (1) of the Electricity (Supply) Act, 1926; 7 Statutes 801.

(a) *Ibid.*

(b) *Ibid.*, s. 11; 7 Statutes 802; but s. 2 of the Electricity (Supply) Act, 1935, allows departures from the tariff with the Commissioners' consent.

(c) There is no definition in the Electricity (Supply) Acts of a "supply for power." The expression is variously and inconsistently defined in Power Acts.

(d) 7 Statutes 776.

**Powers and Obligations.**—The Electricity (Supply) Acts and the Schedule to the Electric Lighting (Clauses) Act, 1899, apply to a power company (*e*), except in so far as they may be varied or excepted by the special Act or Acts of the company. The powers and obligations of any particular company can only be ascertained by an examination of their Acts. Certain general characteristics are, however, common to most Power Acts and will shortly be described.

The company's undertaking is not subject to a right of purchase by the local authority (*f*).

The company is under no obligation to construct distributing mains or to supply owners or occupiers within a certain distance of their mains upon requisition (*g*).

Maximum prices are provided in the special Act, and methods of charge. The provisions of the Schedule to the Clauses Act of 1899 as to prices and methods of charge (*h*) are excluded. The company has no "ordinary consumers" except in areas where they are by special order constituted authorised distributors. In such areas all the usual powers and obligations of authorised distributors apply to them, including the right of the local authority to purchase their "distribution," as distinguished from their "power," undertaking. [703]

The company are usually required to supply "authorised undertakers" as defined in the special Act, viz. authorised distributors and lighting authorities. They are also required to supply any person requiring a supply for power (with limitation in the areas of authorised distributors). The company must lay the necessary transmission lines in each case.

The terms upon which these supplies are to be given are laid down in the special Act.

"Authorised undertakers" are usually required to serve a notice specifying the point at which the supply is to be given by the power company, and the maximum power required, and also to guarantee a minimum annual payment of 20 per cent. on the outlay involved.

Power consumers must contract to take a supply on such terms (including a minimum annual sum) as may be agreed, or, failing agreement, may be determined by an arbitrator, who is required by the Power Act to have regard to certain specified considerations.

Terms may be agreed with any body or person whom the company are authorised to supply; but no undue preference may be shown (*i*).

Electricity supplied by a power company within their area to a railway, tramway, dock, harbour or canal undertaking, may be used for haulage or traction, or lighting vehicles or vessels on any part of the system of the undertaking (*k*). Electricity so supplied (except in the case of tramways) may, with the consent of the Minister of Transport, and subject to such conditions as he may impose, be used for any of the purposes of the undertaking within or without the company's area of supply (*l*). [704]

(*e*) See Electric Lighting (Clauses) Act, 1899, s. 1; 7 Statutes 705.

(*f*) The application of ss. 2, 3 of the Electric Lighting Act, 1888; 7 Statutes 702, 703; is excluded by the special Act.

(*g*) Ss. 21—29 of the schedule to the Electric Lighting (Clauses) Act, 1899; 7 Statutes 721-725; are excluded by the special Act.

(*h*) Ss. 31-34; 7 Statutes 726, 727.

(*i*) Ss. 19, 20 of the Electric Lighting Act, 1882; 7 Statutes 695; apply.

(*k*) Electricity (Supply) Act, 1922, s. 24; 7 Statutes 790.

(*l*) Electricity (Supply) Act, 1926, s. 47; 7 Statutes 819.

The company may not supply for light, save that energy supplied for power may be used (with limitations) by the consumer for lighting purposes.

Penalties are provided for failure to supply in accordance with the company's obligations.

The maximum prices are subject to triennial revision (*m*). A sliding scale is provided, relating prices to dividends.

Where a power company take a supply directly or indirectly from the Central Electricity Board, the price to be charged by them for a supply in bulk to any other authorised undertakers, or for a supply for haulage or traction purposes to a railway company, is to be the price paid for the supply, with the addition of certain specified allowances in respect of transmission lines used for the supply (*n*). In case of difference, the Electricity Commissioners determine the price.

On a power company commencing to receive a supply from the Board, the Minister of Transport may revise maximum and standard prices for supplies other than the above (*o*).

The "nuisance" clause (*p*) is usually excepted by the Power Act from application, either to generating stations erected on specified lands, or (in some cases) to the whole undertaking. The company are then not liable for nuisance caused by their works (at least where the site is authorised) if they have taken all reasonable precautions to prevent it (*q*).

In other respects a power company usually have the powers and are subject to the obligations already set out as being those of authorised distributors. Any variations or exceptions of the application of the Electricity (Supply) Acts and the Schedule to the Clauses Act of 1899, can only be ascertained by an examination of the special Act or Acts of the particular company. [705]

**Companies with Hybrid Powers.**—In recent years companies have been authorised by special Act (*r*) to supply electricity for all purposes (including light) over a large area, with limitations as to supply in areas of authorised distributors. Such companies are given the usual powers and obligations of a power company throughout the area, and must proceed to develop the distribution of electricity in parts of their area for which distribution is not already provided. [706]

#### AUTHORISATION OF UNDERTAKINGS

**By Special Order.**—Authority to supply electricity for all public and private purposes within an area is usually obtained by a special order of the Electricity Commissioners, confirmed by the Minister of Transport, and approved by resolution of each House of Parliament (*s*). [707]

(*m*) Electricity (Supply) Act, 1922, s. 22 (2), (3); 7 Statutes 789.

(*n*) Electricity (Supply) Act, 1926, s. 12, Sched. III.; *ibid.*, 803, 823.

(*o*) Act of 1926, s. 31; *ibid.*, 811; amended by s. 3 of the Electricity (Supply) Act, 1935.

(*p*) S. 81 of sched. to the Electric Lighting (Clauses) Act, 1899; 7 Statutes 740.

(*q*) See *ante*, p. 289.

(*r*) See e.g. the Wessex Electricity Act, 1927; 17 & 18 Geo. 5, c. lxxii.

(*s*) Electricity (Supply) Act, 1919, s. 26; 7 Statutes 772. Anything which, under the Electric Lighting Acts, might have been effected by a provisional order confirmed by Parliament, may be effected by a special order.

*Procedure (t).* An application for a special order must be made by memorial to the Electricity Commissioners, addressed to the Secretary (R. 3). Notice of the application must be inserted in a local newspaper, and in the *London Gazette*. The form and contents of the notice are prescribed (R. 4). On or before the date of publication of the local advertisement, certain additional notices to owners, etc., must be given (R. 5). The applicants must prepare a draft of the order, certain contents of which are prescribed (R. 6). On or before the date of publication of the local advertisement, the memorial of application, signed or sealed on behalf of the applicants, must be deposited at the office of the Electricity Commissioners, together with certain documents and a fee of £35 (R. 7).

A draft of the order must, on or before the date of the local advertisement, be deposited for public inspection with the clerk of the county council (*u*) for each county, and with the local authority of each district, to which the application relates. A draft must also, on or before the same date, be deposited with the joint electricity authority (if any) for the district, and with the Central Electricity Board; also, in London, with the L.C.C. Copies must also be placed on sale (R. 8). Maps showing the proposed area of supply, the streets in which electric lines are to be laid within a specified time, and streets, railways and tramways proposed to be broken up, must similarly be deposited (R. 9). Additions to or alterations of the draft order may be made with the consent of the Electricity Commissioners, subject to the publication of fresh advertisements and the issue of fresh notices unless the Commissioners otherwise direct (R. 11). Proof of compliance with the Electricity (Supply) Acts and Rules must be given, the applicants with their agents or solicitors attending at the office of the Electricity Commissioners for the purpose (R. 13).

A local authority may not apply for a special order except in pursuance of a resolution passed at a special meeting held after one month's notice (*a*). [708]

*Objections to Order.*—Objection to an order must be made by letter sent by registered post to the Secretary, Electricity Commission, on or before the date specified in that behalf at the end of the draft order, in the advertisement, or in any notice served under the Rules.

The letter must state concisely what the objections are, and the interests of the objector. A copy of any suggested clause for insertion in or amendment of the order must be sent with the letter. A copy of the letter (and clause, if any) must at the same time be delivered to the applicants for the order, or their Parliamentary agents or solicitors (R. 13). [709]

*Consent of Local Authority.*—The consent of the local authority having jurisdiction in the proposed area of supply is required for the

(*t*) See Electricity Commissioners' Special Orders, etc., Rules, 1930 (S.R. & O., 1930, No. 102); 23 Statutes 103.

(*u*) Rule 8 required a deposit with the clerk of the peace, but the clerk of the county council is substituted by s. 101 of L.G.A., 1933 (26 Statutes 360), providing that all enactments and statutory orders (defined in s. 305 of the Act) relating to the deposit of plans or documents, other than those relating to judicial business, shall be construed as if the clerk of the county council were therein substituted for the clerk of the peace. See also s. 280 of the Act (26 Statutes 458) as to the reception and inspection of deposited documents.

(*a*) Electric Lighting Act, 1882, ss. 3 (6); 7 Statutes 687.

grant of the order, unless the Electricity Commissioners, having regard to all the circumstances of the case, dispense with such consent (b). [710]

*Inquiry by Electricity Commissioners.*—Where the order is opposed, the Electricity Commissioners direct that a public inquiry should be held at which the applicant and the objector are heard. No procedure is laid down for such an inquiry; but the person appointed to hold the inquiry may order any person to attend as witness, and give evidence, or produce documents; and may take evidence on oath (c). The costs of the Commissioners in respect of the inquiry are to be borne by such of the parties and in such proportion as the Commissioners may direct (d). See also title INQUIRIES. [711]

*Deposit of Order made by Commissioners.*—When the order has been made by the Commissioners and delivered to the applicants, the latter must deposit copies for public inspection and for sale at the offices where the draft order was deposited (R. 14). [712]

*Confirmation by Minister of Order. Objections.*—Before the Minister of Transport confirms the order, he must publish notice of the proposal to confirm it, and of the time (not less than 21 days) within which any objection to the order must be sent to him (e). An objector must address a memorial to the Minister, and send it by registered post to the M. of T., and also to the Parliamentary agents or solicitors for the order. The memorial must be signed or sealed by the objector or a person authorised by him, and must state (1) the order or portion of the order objected to; (2) the specific grounds of objection; and (3) the omission, additions or modifications asked for (f). Where the objection is not met or withdrawn, then (unless it appears to the Minister that the objection is a frivolous objection or has been removed by amendments made by the Electricity Commissioners) he must direct an inquiry to be held (g). The costs of holding the inquiry will be apportioned as the Minister may direct (f). The inquiry is to be held in public, and any objector, and any other person who, in the opinion of the person holding the inquiry, is affected by the order, may appear at the inquiry either in person or by counsel, solicitor or agent (g). The witnesses may be examined on oath (g). [713]

*Approval of Order by Resolutions of Parliament.*—The order, when confirmed by the Minister, is submitted to Parliament, and must be approved with or without modification by resolution of each House before it can come into force (h). A special order made and confirmed in accordance with the Act of 1919 has effect as if enacted in that Act (i). In some cases Parliament has dealt with opposition in Parliament by referring the order to a special committee by whom counsel have been heard (k).

(b) Electric Lighting Act, 1882, ss. 3, 4; 7 Statutes 686, 688.

(c) Electricity (Supply) Act, 1919, s. 33; *ibid.*, 774.

(d) Electricity Commissioners (Costs and Expenses) Rules, 1922 (S.R. & O., 1922, No. 728).

(e) Electricity (Supply) Act, 1919, s. 35, sched.; 7 Statutes 775, 778.

(f) Electricity (Confirmation of Special Orders) Rules, 1931 (S.R. & O., No. 55).

(g) Electricity (Supply) Act, 1919, s. 35, sched.; 7 Statutes 775, 778, as amended by s. 5 of Public Works Facilities Act, 1930 (23 Statutes 775).

(h) Electricity (Supply) Act, 1919, s. 26; 7 Statutes 772.

(i) *Ibid.*, s. 35.

(k) For example, the E. Notts Electricity Special Order, 1928.

It has been held that a special order cannot be revoked or amended by a further special order (*l*). [714]

**By Special Act.**—General powers for the distribution of electricity for all purposes are not normally conferred by Act of Parliament. Power companies and companies with hybrid powers (*m*) are authorised to supply electricity by special Act; and borough councils who are “authorised undertakers” frequently obtain extended or special powers with regard to their supply of electricity in a local Act. [715]

#### RIGHTS, ETC., OF LOCAL AUTHORITIES NOT UNDERTAKERS

Local authorities who are not authorised undertakers have various rights and functions under the Electricity (Supply) Acts, 1882 to 1935, and the Electric Lighting (Clauses) Act, 1899. The principal examples are the following: (1) Right to purchase undertaking in their borough or district (*n*). (2) Right to make representation to the M. of T. as to alteration of prices and methods of charge (*o*). (3) Right to appoint electric inspectors and approve testing stations (*p*). (4) Right to be heard when the consent of the M. of T. is required to the placing of electric lines above ground (*q*). (5) Right to demand a supply for public lamps within 75 yards of distributing main; and to requisition for such main (*r*). (6) The approval of the local authority is required to any works of the undertakers in, under, along or across any street or public bridge: appeal to the M. of T. (*s*). (7) Regulation of the access of undertakers to street boxes (*t*). (8) Right to execute works when streets repairable by them are broken up (*u*). (9) Reciprocal rights of altering position of lines and pipes under street: undertakers may not move sewer (*a*). (10) Protection of pipes, etc., of local authority when undertakers dig trenches near them (*b*).

The undertakers must give notice to the local authority of the proposed method of making charges, before commencing to supply through any distributing main (*c*); and of any line which they propose to lay for the supply of a particular customer under special agreement (*d*).

Any penalty recovered by an officer of a local authority must be applied in aid of the local rate (*e*). [716]

#### LONDON

The supply of electricity is governed by the Electricity (Supply) Acts, 1882-1935 (*f*), but the Electric Lighting (Clauses) Act, 1899 (*g*), does not apply to London except in so far as any of the provisions of the Schedule are incorporated in any order or special Act (*h*). Most

(*l*) *R. v. Minister of Transport, ex parte Leicestershire and Warwickshire Electric Power Co.* (1928), 92 J. P. 171; Digest (Supp.).

(*m*) See *ante*, pp. 300, 302.

(*n*) See *ante*, p. 291.

(*o*) See *ante*, p. 284.

(*p*) See *ante*, p. 291.

(*q*) See *ante*, p. 285.

(*r*) Electric Lighting (Clauses) Act, 1899, sched., s. 29; 7 Statutes 725.

(*t*) *Ibid.*, s. 13 (4); *ibid.*, 712.

(*s*) *Ibid.*, s. 14; *ibid.*, 713.

(*a*) *Ibid.*, s. 17; *ibid.*, 717.

(*u*) *Ibid.*, s. 16; *ibid.*, 716.

(*c*) *Ibid.*, s. 31 (3); *ibid.*, 726.

(*b*) *Ibid.*, s. 18; *ibid.*, 719.

(*e*) *Ibid.*, s. 76 (2); *ibid.*, 739.

(*d*) *Ibid.*, s. 22; *ibid.*, 722.

(*f*) 7 Statutes 686 *et seq.*; 26 Statutes 137.

(*g*) See s. 2 (2) of that Act; 7 Statutes 706.

(*h*) In London functions, which by the schedule are conferred on the local authority are conferred in addition or substitution on the L.C.C., e.g. appointment of electric inspectors and approval of plans.

of the Electric Lighting Orders relating to London were made before 1899, and the individual orders (which vary somewhat) should be consulted in each case. They contain provisions corresponding to those of the Schedule.

The general oversight of electricity supply in London is in the hands of the London and Home Counties Joint Electricity Authority (*i*) the area of jurisdiction of which, the London and Home Counties Electricity District, covers 1,841 square miles and, except at Watford, extends in all directions beyond the area known as Greater London. The district includes the whole of the counties of London and Middlesex, and parts of the counties of Herts, Essex, Kent, Surrey, Bucks. and Berks., the City of London, and the county boroughs of Croydon, East Ham and West Ham, and stretches from Harpenden and Welwyn in the north to Leith Hill in the south, and from Taplow in the west to Benfleet in the east. At the census of 1931 this area had a population of 9,088,764, and its rateable value in April, 1932, was over £98,000,000.

The duty of the Joint Authority is to provide or secure the provision of a cheap and abundant supply of electricity within the district. A technical scheme for the improvement of the supply of electricity in the district was included in the order of 1925. Where, however, this conflicts with any obligation arising out of the South-East England Electricity Scheme of the Central Electricity Board, the latter is to prevail (*k*). The joint authority may construct generating stations, main transmission lines, and other works, and have the power of acquiring undertakings by agreement conferred by sect. 13 of the Electricity (Supply) Act, 1919 (*l*). Sub-sect. (2) of the same section (as amended by the Act of 1926) authorises the transfer to the Authority of the rights of purchase of local authorities by the order of the Electricity Commissioners constituting the joint authority or by an amending order. Two amending orders have been made (1931 and 1932), transferring to the Authority the purchase rights of the local authorities in certain areas. Any authorised undertakers supplying electricity within the district may (subject to the approval of the Electricity Commissioners) by agreement transfer to the joint authority a generating station or main transmission lines; or may agree for their use by the authority, or for the giving of a bulk supply to the Authority (*m*). The Joint Authority may (with the approval of the Electricity Commissioners) undertake by agreement any general duties of authorised undertakers in the district (*n*). Undertakers are given powers of mutual assistance similar to those conferred by sect. 19 of the Electricity (Supply) Act, 1919 (*o*).

It has been decided that the Joint Authority cannot lawfully defray the expenses of promoting a Bill in Parliament for the extension of their powers (*p*). When a local Act (*q*) was obtained by the joint

(*i*) Set up by London and Home Counties Electricity District Order, 1925.

(*k*) Electricity (Supply) Act, 1926, s. 19; 7 Statutes 806.

(*l*) 7 Statutes 761. A number of distribution undertakings have been acquired by the authority.

(*m*) London and Home Counties Electricity District Order, 1925, sched., ss. 12, 21.

(*n*) *Ibid.*, s. 21.

(*o*) *Ibid.*, s. 26. For s. 19, see 7 Statutes 766.

(*p*) *A.-G. v. London and Home Counties Joint Electricity Authority*, [1929] 1 Ch. 513; Digest (Supp.).

(*q*) London and Home Counties Joint Electricity Authority Act, 1927 (17 & 18 Geo. 5, c. cix.).

authority in 1927, to authorise them to construct a generating station at Chiswick, sect. 31 of the Act authorised the authority to pay the costs of promoting the Bill and to borrow for the purpose. [717]

With the exception of Gatton parish and part of Buckland parish in Reigate rural district, orders have been granted for the whole of the district. Of the London companies, three (County of London, Metropolitan and South Metropolitan) are authorised to supply outside the administrative County of London.

Certain of the authorised distributors within the district have also powers of bulk supply.

The supply of electricity in the County of London is in the hands of sixteen metropolitan borough councils and fourteen companies. The London Electric Lighting Areas Act, 1904 (*r*), provides for the adjustment of areas of supply in certain circumstances when the area of a metropolitan borough was adjusted under the London Government Act, 1899 (*s*), and contains provisions giving effect to such an adjustment.

A metropolitan borough council carrying on an undertaking may borrow for the purposes of their undertaking with the consent of the Electricity Commissioners acting in consultation with the L.C.C. (*t*).

Sects. 27—29 of the L.C.C. (General Powers) Act, 1906 (*u*), empower metropolitan borough councils authorised to supply and supplying electricity to supply (but not to manufacture) wires, fittings, motors and apparatus; to enter into agreements with consumers for the supply thereof; and to borrow for such purposes.

The London Electric Supply Act, 1908 (*a*), authorises metropolitan borough councils supplying electricity and certain company undertakers to enter into agreements for mutual assistance or for association with each other for (1) supply and distribution of electricity, (2) management and working of generating stations and undertakings, and (3) division of receipts and provision of capital. Any such agreement is to be subject to the approval of the Board of Trade (now the Electricity Commissioners), and the L.C.C. are entitled to make representations and to be heard before such approval is given. Similar provision is made in the London (Westminster and Kensington) Electric Supply Companies' Act, 1908 (*b*), so far as regards the companies mentioned in that Act.

Sect. 56 of the L.C.C. (General Powers) Act, 1924 (*c*), enables a metropolitan borough council carrying on an electricity undertaking to apply the net surplus revenue of the electricity undertaking to the purchase and erection of plant instead of to relief of the rates subject, however, to a proviso that the powers shall not be exercised so long as the aggregate deficiencies of the income of the undertaking paid out of the local rate exceed the aggregate amount of surplus revenue of the undertaking transferred to the rate or applied to the improvement of the borough or in reduction of loans borrowed for the undertaking. (See also title INCOME TAX, sub-heading "London.") [718]

(*r*) 11 Statutes 1254.

(*s*) S. 1; 11 Statutes 1225.

(*t*) Electric Lighting Act, 1882, s. 8 and sched.; 7 Statutes 690, 700; Electricity (Supply) Act, 1919, s. 20 (7 Statutes 767).

(*u*) 11 Statutes 1278. For subsequent general legislation on this subject, see *ante*, p. 282.

(*a*) 8 Edw. 7, c. clxvii.

(*b*) 8 Edw. 7, c. clxviii.

(*c*) 11 Statutes 1368. For subsequent general legislation on this subject, see *ante*, p. 294.

The conditions under which the company undertakings in the County of London now operate are to a great extent governed by the London Electricity (Nos. 1 and 2) Acts, 1925 (*d*). These Acts were promoted by two groups of companies in order, *inter alia*, to confirm agreements between the L.C.C. and the companies with a view to the ultimate transfer of the undertakings of the companies to the Joint Electricity Authority. The No. 1 Act group consists of the City of London, County of London, South London and South Metropolitan companies, and the No. 2 Act group of the Brompton and Kensington, Charing Cross, Chelsea, Kensington and Knightsbridge, London, Metropolitan, Notting Hill, St. James's and Pall Mall and Westminster companies. The Central Electric Supply Company, originally one of this group, was voluntarily wound up on October 25, 1932.

By the Acts of 1925 the company undertakings in the County of London are to be transferred to the Joint Electricity Authority on December 31, 1971 (unless previously purchased by the Authority by agreement). Sinking funds of two classes have been established, the first to liquidate the value of the assets of the companies as at the date of the establishment of the Joint Authority, which assets will be transferred free of charge; the second to reduce the value of assets subsequently provided which will be taken over at book value less the credits of these funds. The Acts also empowered the companies in each group to amalgamate; provided for the regulation of dividends by sliding scales in relation to charges; and required the companies to notify the Joint Electricity Authority of any proposal to expend capital exceeding £5,000 on any individual item of assets which may be purchasable by the Joint Electricity Authority in 1971, to maintain any transferable assets to the satisfaction of the Joint Electricity Authority; to dispose in accordance with the reasonable directions of the Joint Authority of any electricity generated in excess of that which they may be under obligation to supply to any company, body or person, and to carry out, so far as relates to their London areas, the technical scheme for the district.

With regard to amalgamation, the generating stations of the four companies of the No. 1 Act group have been joined by interconnecting cables, but no comprehensive scheme of amalgamation has yet been carried out. The nine companies of the No. 2 Act group are constituent members of the London Power Company, which has purchased or taken on lease the generating stations of the nine companies and supplies them all in bulk. [719]

The technical scheme for the London and Home Counties Electricity District has, to some extent, been merged in the South-East England Electricity Scheme which has been prepared under the Electricity (Supply) Act, 1926, and is now being carried out by the Central Electricity Board. The Joint Electricity Authority control, by agreement, a number of generating stations which they operate for the Central Electricity Board by arrangements under sect. 1 of the Electricity (Supply) Act, 1935. [720]

Under the London Electricity (No. 1 and No. 2) Acts, 1925 (*d*), the L.C.C. is entitled, in certain circumstances, to make representations to the Electricity Commissioners with a view to the revision of the standard prices or methods of charge of the companies within the county.

The L.C.C. has certain powers and duties under the various orders relating to the County of London outside the City. The principal of these is the appointment of inspectors, who are responsible for the periodic inspection and testing of lines and works and of the supply of energy given, the certification and examination of meters, and the sanction of alterations by authorised undertakers of systems of supply or pressure. It is also entitled, except in cases within the City of London, to receive from companies which are authorised distributors, with two exceptions (Chelsea and South London), notices of intention to carry out works in public thoroughfares, and it may attach conditions before consenting to such works being carried out. The council has no power with regard to works undertaken by the metropolitan borough councils, except in the case of St. Pancras.

Buildings used by authorised undertakers in London as generating stations or for works, are exempt from certain requirements of the London Building Act, 1930 (e). [721]

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(e) See ss. 224 (4), 227 of that Act ; 23 Statutes 328, 331.

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*See also titles : EDUCATION ;  
EDUCATION FINANCE ;  
INFANTS, CHILDREN AND YOUNG PERSONS.*

This article will deal mainly with provisions made in the Education Act, 1921 (*a*), and in general where the expression "the Act" is used it will refer to this Act.

## INTRODUCTION

There is, strangely perhaps, no statutory definition of "elementary education," although, according to the Education Act, 1921, an elementary school is one at which elementary education is the principal part of the education there given (*b*).

When it is considered that a parent is only under a statutory obligation to cause his child to receive efficient elementary instruction in reading, writing and arithmetic (*c*), it might be assumed that this indicates what the Legislature considered to be the content of elementary education. But it must not be forgotten that as respects compulsory education the Act of 1921 mainly reproduced the requirements of the Elementary Education Act, 1876 (*d*), and during the intervening years opinions have changed as regards the elements of education. [722]

At the present time, the expression "elementary education" usually means the education given in a day school for pupils attending such schools from the age of 5 years to the age of 14 or 15 years. That is, it is an educational entity and not designed to be a preparation for any other form of full-time education. For those pupils who have completed a course of elementary education, there are evening classes, and by this means an industrious pupil who lives in or near a populous centre may eventually graduate.

There was a tendency—never officially recognised—a few years ago to term "elementary" schools "primary" schools on the ground that there were three stages in a complete education, namely, primary, secondary and tertiary or adult education. These terms have now, however, a definite meaning, and "elementary" now includes the three stages of education given in infant, junior and senior, central or modern schools. The education provided in junior schools is now termed "primary" (*e*), although the same term is sometimes used to include any school which takes children up to the age of 11 years, whether it includes or excludes infant children. [723]

#### PUBLIC ELEMENTARY SCHOOLS AND PRIVATE SCHOOLS

From the point of view of the public administrator, elementary education will be concerned chiefly with schools which are either provided and maintained by a local education authority (usually termed "council" or "provided" schools, the successors to "board" schools) or those which are not provided by but are maintained by a local education authority (usually termed "voluntary" or "non-provided" schools). These latter are usually provided by religious bodies connected with the Church of England, or the Roman Catholic or Nonconformist Church, or the Jewish faith. There are also some undenominational non-provided schools.

It must be borne in mind that there are also approximately 10,000 private schools, containing about 400,000 pupils of all ages. Many of these are termed "preparatory" schools and prepare pupils for public or secondary schools. On the other hand, the majority, perhaps, are alternatives to public elementary schools and provide education for the statutory period during which a parent is under an obligation to cause his child to receive instruction.

Over schools of this type neither the Board of Education nor the local education authority have any control.

When, however, a new private school is opened, certain information

(*c*) S. 42; 7 Statutes 153.

(*d*) 39 & 40 Vict. c. 79, s. 4.

(*e*) See Report of the Consultative Committee on "The Primary School" (1931).

regarding it has to be supplied to the Board of Education (*f*). Further it is not a defence to proceedings relating to school attendance that a child is attending a private school, unless it is open to inspection by the Board of Education or the local education authority, and unless satisfactory attendance registers are kept (*g*). This does not give either the Board of Education or the local education authority a right to inspect such schools, and this can only be done on the invitation of the governing body or principal under sect. 134 (3) of the Act (*h*). [724]

#### SCHOOL ATTENDANCE

**The Duty of a Parent.**—Under sect. 42 of the Act (*i*), it is the duty of the parent of every child between the ages of 5 and 14 years, or, if a bye-law under the Act so provides, between the ages of 6 and 14 years (*k*), to cause that child to receive efficient elementary instruction in reading, writing and arithmetic.

In this, as in other cases under the Act, the expression "parent" in relation to a child includes guardian and every person who is liable to maintain or has the actual custody of the child (*l*). Thus, if the father of a child or the husband of the child's mother is absent from home, whether by desertion or in the pursuit of his calling, as in the case of a sailor, then the mother, if the child is living with her, may be considered as the parent (*m*). Similarly, a mother would be responsible for the child's instruction in accordance with the Act while the father is serving a term of imprisonment (*n*). If an attendance order has been made upon the father as "parent" it cannot be enforced against the mother after the father's death, even although she appeared to represent him when the order was made (*o*).

If a child stays temporarily with a friend or relative away from home, this does not divest the parent of his duty to comply with the Act or the bye-laws made thereunder as regards the child (*p*). [725]

**School Attendance Orders.**—If a parent habitually and without reasonable excuse neglects to provide efficient elementary instruction for his child, the local education authority should first warn him of the requirements of the Act. If compliance does not follow, the authority should complain to a court of summary jurisdiction, with a view to obtaining a school attendance order (*q*). Similar action should be taken if a child is found habitually wandering, or not under proper control, or in the company of rogues, vagabonds, disorderly persons or reputed criminals (*r*).

When such a complaint is made and the court are satisfied of the truth of the complaint, they may make a school attendance order that

(*f*) Act of 1921, s. 155; 7 Statutes 207.

(*g*) *Ibid.*, s. 147; 7 Statutes 204.

(*h*) 7 Statutes 201. See also Report of the Departmental Committee on Private Schools (1932).

(*i*) 7 Statutes 153.

(*l*) See "Provisions as to Age," *post*, p. 315.

(*l*) Act of 1921, s. 170 (12); 7 Statutes 213.

(*m*) *Hance v. Burnett* (1880), 45 J. P. 54; 19 Digest 564, 62.

(*n*) *Woodward v. Oldfield*, [1928] 1 K. B. 204; Digest (Supp.).

(*o*) *Hance v. Fairhurst* (1882), 51 L. J. (M. C.) 139; 19 Digest 565, 69.

(*p*) *London School Board v. Jackson* (1881), 7 Q. B. D. 502; 19 Digest 564, 63.

(*q*) Act of 1921, s. 43 (1) (a); 7 Statutes 153.

(*r*) *Ibid.*, s. 43 (1) (b). See also Children and Young Persons Act, 1933, s. 10; 26 Statutes 177.

the child shall attend a certified efficient school (*rr*) willing to receive him and named in the order (*s*). This school should be one selected by the parent or the court. The child must then attend the school regularly (*s*). It is incumbent on those who apply for an order to name a school willing to receive the child (*t*). It has been held that attendance at a private school where a child is not being provided with efficient elementary instruction is no defence (*u*). Neither is the irregular attendance of a child at a school other than the one named in the order considered as compliance with the order (*a*).

Where there is an habitual neglect of a parent to cause his child to be instructed in accordance with the provisions of the Act, proceedings should be taken under the Act (*i.e.* by complaint under sect. 43) and not under the bye-laws (*b*). [726]

**Non-compliance with a School Attendance Order.**—If a parent fails to comply with a school attendance order without reasonable excuse (see *infra*) then it is open to the local education authority again to complain to the justices under the new section which has been substituted for sect. 45 of the Act of 1921 by the Third Schedule to the Children and Young Persons Act, 1933 (*c*).

Should the parent fail to appear or fail to satisfy the court that he has used all reasonable efforts to enforce compliance with the order, then a fine not exceeding with the costs 20s. may be imposed. If, on the other hand, the court are satisfied that the parent has used all reasonable efforts to enforce compliance with the order and has failed, then the child may be sent to an approved (industrial) school or committed to the care of a fit person under the Act of 1933. In the event of a second or subsequent case of non-compliance with an order, the child may be sent to an approved (industrial) school, or so committed, and in addition there may also be imposed a fine not exceeding with the costs 20s., or the fine alone may be imposed for such non-compliance (*d*).

Complaints of this nature must not be made by a local education authority at intervals of less than two weeks (*e*).

These complaints may now be assigned to juvenile courts by rules of the Lord Chancellor made under sect. 46 (3) of the Children and Young Persons Act, 1933 (*f*).

Although the local education authority complains to a court of summary jurisdiction under sect. 43 of the Act of 1921, it should be noted that the school attendance order is made under sect. 44 of that Act. [727]

**Reasonable Excuse.**—In sect. 49 of the Act of 1921 (*g*), it is laid down that any of the following reasons shall be a reasonable excuse for failure on the part of a parent to cause his child to receive efficient elementary

(*rr*) The Board of Education have made rules (Rules 16) stating the conditions upon which they will recognize certain schools as efficient : see also s. 170 (2).

(*s*) Act of 1921, s. 44 ; 7 Statutes 154.

(*t*) *Thompson v. Rose* (1891), 61 L. J. (M. C.) 26 ; 19 Digest 565, 70.

(*u*) *Shiers v. Stevenson* (1911), 105 L. T. 522 ; 19 Digest 565, 71. See also s. 147 ; but see *R. v. Morris* (also reported as *R. v. West Riding of Yorkshire JJ.*), [1910] 2 K. B. 192 ; 19 Digest 567, 87.

(*a*) *Isle of Wight County Council v. Holland* (1909), 101 L. T. 861 ; 19 Digest 567, 86.

(*b*) *Morgan v. Heycock* (1880), 44 J. P. Jo. 199 ; 19 Digest 564, 65.

(*c*) 26 Statutes 243.

(*d*) Children and Young Persons Act, 1933, Sched. III., now s. 45 of the Act of 1921 ; 26 Statutes 245.

(*e*) *Ibid.*

(*f*) 26 Statutes 200.

(*g*) 7 Statutes 157.

instruction as required by the Act or for a breach of the bye-laws (see *infra*) made under the Act : (1) That the child has been prevented from attending school by sickness or any other unavoidable cause ; (2) that there is no public elementary school open which the child can attend within such distance, not exceeding 3 miles, measured according to the nearest road from the residence of the child, as the bye-laws may prescribe ; (3) in the case of non-compliance with a bye-law requiring a parent to cause his child to attend school, that the child is under efficient instruction in some other manner.

As respects (2), it should be borne in mind that the term " road " is not confined to a high road or a road of any particular kind, but includes any available route, such as a cart track over a field by which the school could be reached by a child (*h*).

If the local education authority provide suitable means of conveyance for a child between a reasonable distance of its home and a public elementary school, then it is not a reasonable excuse that there is no public elementary school open within the distance of three miles or such lesser distance as the bye-laws may prescribe (*i*). [728]

Although the Act mentions three reasonable excuses, this does not preclude others. In fact, it has been held that the possible number of reasonable excuses is without limit, and it is for the court to decide in the circumstances whether any excuse which is pleaded is reasonable or not (*k*).

The plea that a child is absent from school because it is in employment or because its earnings are necessary for the maintenance of the family is not now a " reasonable excuse " for non-attendance at school (*l*) although in an earlier case and in special circumstances it was held to be so (*m*).

If a child is sent to school in a verminous condition by a parent who knows the fact and can cure the complaint by simple means, and the head teacher refuses to admit the child, the parent does not cause his child to attend school (*n*).

Evidence that some of the children attending a school or a clinic for skin diseases have been suffering from ringworm may be a reasonable excuse for a parent's refusing to send his child to such a school or clinic (*o*).

The withdrawal of a child to receive lessons in pianoforte playing does not constitute a reasonable excuse for absence from school (*p*).

In cases that have come before justices, the following decisions are interesting :

<i>Justices.</i>	<i>Decision.</i>
Southwell -	- Parent fined for non-attendance of child at cookery centre.
Perbridge -	- Parent fined for non-attendance of child on ground of her not being promoted to a higher class.

(*h*) *Hares v. Curtin*, [1918] 2 K. B. 328 ; 19 Digest 568, 89.

(*i*) Act of 1921, s. 49 proviso ; 7 Statutes 157.

(*k*) *Belper School Attendance Committee v. Bailey* (1882), 9 Q. B. D. 259 ; 19 Digest 565, 75 ; *L.C.C. v. Maher*, [1929] 2 K. B. 97 ; Digest (Supp.).

(*l*) *Rednall v. Beamish* (1926), 90 J. P. 153 ; Digest (Supp.).

(*m*) *London School Board v. Duggan* (1884), 18 Q. B. D. 176 ; 19 Digest 566, 78.

(*n*) *Walker v. Cummings* (1912), 76 J. P. 375 ; 19 Digest 567, 83.

(*o*) *Symes v. Brown* (1918), 77 J. P. 345 ; 19 Digest 568, 91 ; and *Bowen v. Hodgson* (1923), 93 L. J. (K. B.) 76 ; 19 Digest 568, 92.

(*p*) *Osborne v. Martin* (1927), 91 J. P. 197 ; Digest (Supp.).

*Justices.*

Andover - - Parents (and organiser of excursion, as aiding and abetting the parents in a breach of the bye-laws) fined for breach of the bye-laws by reason of children's absence on an excursion to the seaside. [729]

*Decision.*

**Bye-laws.**—It is the duty of a local education authority to make and enforce bye-laws for their area respecting the attendance of children at school (*q*). Where the local education authority are a county council they may, if they think fit, make different bye-laws for different parts of their area (*r*). The Board of Education, in their Circular 1180 dated October 12, 1920, issued a new model form of bye-laws for adoption by local education authorities. Bye-laws made by a local education authority must not prevent the withdrawal of any child from any religious observance or instruction in religious subjects, and must not require any child to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs (*s*). It has been held that Ascension Day is one of the days exclusively set apart for religious observance by members of the Church of England (*t*).

The penalty fixed by the bye-laws for a breach must not exceed 20s. for each offence, this sum to include both fine and costs (*u*). All offences and fines under the Act or the bye-laws are punishable and recoverable on summary conviction (*a*). [730]

**Provisions as to Age.**—The bye-laws so made normally require the parents of children between the ages of 5 years and not less than 14 years to cause their children to attend school at the times stated in the bye-laws, unless there is some reasonable excuse (*b*). Bye-laws may be made requiring children to attend school until the age of 15 years, or not requiring them to attend school or receive elementary instruction in reading, writing and arithmetic before the age of 6 years (*c*). Deaf, defective and epileptic children must receive appropriate education between the ages of 7 and 16 years, but in the case of blind children the period of compulsory education begins at the age of 5 years (or 6 if there is a bye-law to this effect) and continues to the age of 16 years (*d*).

The Board of Education may, in certain circumstances, authorise the instruction of children in public elementary schools until the end of the term in which they reach the age of 16 years or even a later age (*e*). Where this extended age limit does not operate, it would appear that a child may attend a public elementary school until the end of the school year during which it reached the age of 15 years. The

(*q*) Act of 1921, s. 46 (1); 7 Statutes 155.

(*r*) *Ibid.*, s. 46 (6).

(*s*) *Ibid.*, s. 46 (4).

(*t*) *Marshall v. Graham, Bell v. Graham*, [1907] 2 K. B. 112; 19 Digest 567, 85.

(*u*) Act of 1921, s. 46 (5); 7 Statutes 156.

(*a*) *Ibid.*, s. 139; *ibid.*, 202.

(*b*) *Ibid.*, s. 46 (2); *ibid.*, 155.

(*c*) *Ibid.*, ss. 46 (2), (4) (c) and 48 (4); *ibid.*, 155, 157. But the Board of Education will have regard to the adequacy of the provision of nursery schools for the area; s. 48 (4).

(*d*) *Ibid.*, ss. 51, 53, 61; *ibid.*, 159, 160, 165.

(*e*) *Ibid.*, s. 26 (1); *ibid.*, 141. For the procedure to be adopted by a local education authority, see B. E. Circular No. 1335, dated July 1, 1924.

educational year may be substituted for the school year with the approval of the Board of Education (f). [731]

Where a bye-law requires parents of children between the ages of 14 and 15 years to cause their children to attend school, the bye-laws may apply generally to all such children or to children other than those employed in any specified occupations (g). A local education authority may grant exemption from the obligation of such children to attend school between the ages of 14 and 15 years for such time and upon such conditions as the authority think fit in any case, if, after inquiry has been made, the circumstances seem to justify such an exemption (g).

The terms "reasonable excuse" and "exemption" as used above in connection with absence from school must be clearly distinguished. "Reasonable excuse" refers to non-attendance on a particular occasion whereas "exemption" refers to legal release from obligation to attend school. Where application has been made to a local education authority for exemption from school attendance on the ground of employment of a child between the age of 14 and 15 years and the exemption has been refused, the employment cannot, by itself, be a "reasonable excuse" for non-attendance on which the parent can rely in answer to a summons for failing to cause his child to attend school (h).

The Board of Education will not recognise attendances of children under 3 years of age or children for whom the authority are not authorised under sect. 26 of the Act to provide instruction (i). [732]

**Ascertainment of Age.**—A child, as in the case of all persons in the absence of statutory provisions to the contrary, attains a specified age on the first moment of the day immediately preceding the anniversary of his birthday (k).

In order to prove the age of a child for any purpose in connection with elementary education, certificates of birth may be obtained from a registrar of births and deaths for 6d. on a special form of requisition being filled in (l). Any such registrar, when so requested by an elementary education authority, must supply a return to the authority of the births and deaths registered by him (m). A form approved by the M. of H. may be used for this purpose. An agreed fee not exceeding 2d. for every birth and death entered on the form may be paid by the authority (m).

A very important provision as to school age is contained in sect. 138 (1) of the Act (n) for the avoidance of broken terms. If a child is attending, or is about to attend, a public elementary school or a special school certified under Part V. of the Act (which deals with the education of blind, deaf, defective and epileptic children) the child is not deemed to have attained any year of age until the end of the term in which the birthday falls. The general effect of this is that instead of children leaving on their fourteenth birthday, as was usual before the Education

(f) Act of 1921, s. 26 (2) (b); 7 Statutes 142. The school year is the period for which annual grants are paid, see s. 170 (7) of the Act (7 Statutes 213).

(g) Act of 1921, s. 46 (3); 7 Statutes 155.

(h) *Rednall v. Beamish* (1926), 90 J. P. 153; Digest (Supp.). See also *Thomas v. Hughes*, [1929] 1 K. B. 226; Digest (Supp.).

(i) Education Code, 1926, S.R. & O., 1926, No. 856, Art. 21 (c).

(k) *Re Shurey, Savory v. Shurey*, [1918] 1 Ch. 263; 42 Digest 962, 368.

(l) Act of 1921, s. 135; 7 Statutes 201. For the form, see S.R. & O., 1930, No. 168.

(m) *Ibid.*, s. 136; 7 Statutes 202.

(n) 7 Statutes 202.

Act, 1918 (*o*), was passed, they are now required to remain in attendance at school until the end of the term. The result of this differs according to the number of terms in a year to which the local education authority and the Board of Education have agreed. As a rule there are either three or four terms in a year.

The school holidays following a term should not be considered as part of the term (*p*).

As far as the admission of young children to school is concerned the local education authority may, with the approval of the Board of Education, make regulations providing that children shall be admitted to school only at the commencement of a term (*q*). Children would then be admitted at the commencement of the term immediately following the attainment of 5 or 6 years (according to the bye-laws) or 7 years in the case of deaf, defective or epileptic children. [733]

**Times of Attendance.**—The bye-laws may determine the times at which children are to attend school (*r*). Bye-laws usually provide that the time during which every child shall attend school shall be the whole time for which the school selected shall be open for the instruction of children of similar age. There may, however, be partial exemption in the case of children between the age of 14 and 15 years, where there is a bye-law requiring children to attend school until they are 15 years of age (*s*).

The Education Code (*t*) requires that a morning or afternoon school meeting must comprise at least one-and-a-half hours' secular instruction in the case of classes of infants and two hours in the case of classes of older children. These periods must not include either the time given to religious instruction or observance or the time allowed for marking the registers, but they may include the recreation period and any time occupied by the school medical service (*u*). [734]

**Failure to make Bye-laws.**—In any area for which bye-laws have not been made under the Act, the Board of Education may themselves make bye-laws regarding the attendance of children at school (*a*). These bye-laws would then have the same effect as if they had been made by the local education authority. Alternatively, the Board may use their power of enforcing an exercise by the local education authority of their duty either by *mandamus* or withholding grant (*b*). [735]

**Procedure as to Approval of Bye-laws.**—School attendance bye-laws cannot come into operation until they have been sanctioned by the Board of Education (*c*). Not less than a month before a local education authority submit bye-laws to the Board they must deposit a printed copy at the office of the authority for inspection by any ratepayer and also supply a free copy to any ratepayer who applies for one. A notice must also be published that the bye-laws have been so deposited (*c*).

(*o*) 8 & 9 Geo. 5, c. 39, s. 9.

(*p*) Cf. *Hann v. Plymouth Corpn.* (1910), 9 L. G. R. 61; 19 Digest 606, 313.

(*q*) Act of 1921, s. 138 (2); 7 Statutes 202.

(*r*) *Ibid.*, s. 46 (2); *ibid.*, 155.

(*s*) *Ibid.*, s. 46 (3).

(*t*) S.R. & O., 1926, No. 856.

(*u*) *Ibid.*, Art. 21 (a).

(*a*) Act of 1921, s. 47; 7 Statutes 156.

(*b*) *Ibid.*, ss. 118 (4), 150; *ibid.*, 194, 205.

(*c*) *Ibid.*, s. 48 (1), (2); *ibid.*, 156.

Before the bye-laws can be approved, the Board of Education must be satisfied that the deposit has been made and the notice published, and if they deem it necessary a local inquiry may be held (d).

If the bye-laws do not require attendance at school until the age of 6 years, the Board of Education must have regard to the adequacy of the provision of nursery schools for the area (e). A public inquiry must be held to determine whether such a bye-law should be approved, if a request for it is made by ten parents of children attending public elementary schools for that area (e). [736]

**Legal Proceedings to Enforce Bye-laws.**—The following special provisions regulate legal proceedings on prosecutions for non-attendance at school, such as complaints under sects. 43, 45, 54 of the Act (f), and proceedings under a local education authority's bye-laws.

(1) *Proof of Attendance at School.*—If, through the default of the managers of a public elementary school, a local education authority are unable to ascertain whether a child or young person who is resident in their area and attends that school, attends in conformity with the Act and the bye-laws, the onus of proof that the child or young person has attended in accordance with the Act or the bye-laws lies on the defendant (g). [737]

(2) *Certificate of Teachers as to Attendance.*—Evidence that a child is or is not attending a public elementary school and particulars of attendance may be given by submitting a certificate signed by the principal teacher of the school (h). The maximum penalties for forging a certificate are imprisonment with or without hard labour for three months or a fine of £20 (i). [738]

(3) *Institution of Proceedings.*—Before legal proceedings for non-attendance or irregular attendance, whether under the Act or the bye-laws, are commenced, authority to take the proceedings must be given by not less than two members of the education committee or of a sub-committee appointed for school attendance purposes (k). See also sect. 147 of the Act, referred to *ante*, at p. 312. [739]

**School Attendance Officers.**—A local education authority may appoint officers (who are usually called school attendance officers, school inquiry officers or school officers) to enforce the Act and the bye-laws with reference to the attendance of children at school (l). These officers, like other officers of a local education authority, hold office during the pleasure of the authority (m), unless it has been agreed under sect. 121 of L.G.A., 1933 (n), that the appointment is not to be determined by either party without reasonable notice. [740]

**Attendance Registers.**—The Board of Education may make regulations with respect to the preservation of school attendance registers (o).

(d) Act of 1921, s. 48 (3); 7 Statutes 156.

(e) *Ibid.*, s. 48 (4); 7 Statutes 157.

(f) 7 Statutes 153, 154, 160. For the new s. 45, see Sched. III. to Children and Young Persons Act, 1933; 26 Statutes 245.

(g) Act of 1921, s. 142; 7 Statutes 208. See also s. 153 as to the duties of the managers (7 Statutes 206).

(h) Act of 1921, s. 143.

(i) *Ibid.*, s. 160; 7 Statutes 209.

(k) *Ibid.*, s. 144; *ibid.*, 203.

(l) *Ibid.*, s. 149; *ibid.*, 205.

(m) *Ibid.*, s. 148; *ibid.*, 204.

(n) 26 Statutes 370. For the effect of this section, see Vol. I., p. 344.

(o) Act of 1921, s. 154; 7 Statutes 206.

The Board's requirements as to the keeping of attendance registers are to be found in Board of Education Administrative Memorandum No. 51, dated January, 1927.

The managers are expected to supervise the registration and for this purpose to visit their school without notice at least once a quarter, in order to ensure that the registers have been properly marked and closed. The visit should take place during secular instruction. Where a school has no managers, these duties may be performed by an authorised officer of the local education authority (*p*).

All attendance registers should be kept for at least ten years after they have been filled (*q*). [741]

**Returns as to School Attendance.**—The managers of a public elementary school must fill in and return any forms supplied to them by the local education authority for the purpose of obtaining reasonable information with respect to the attendance at their school of children residing in the area of the authority (*r*). This must be done in the manner required by the authority. The managers must also give the information necessary to enable the authority to ascertain whether a child is attending school in accordance with the bye-laws (*r*).

If the managers fail so to do, they must allow an officer of the authority to obtain the necessary information from registers and other documents relating to the attendance of children at the school (*s*).

If a dispute arises between the local education authority and the managers as to the reasonableness of the information required, the Board of Education must decide between them (*t*). [742]

#### TYPES OF PUBLIC ELEMENTARY SCHOOLS AND DEPARTMENTS

Before proceeding to the administrative and legal matters concerning public elementary schools, it is advisable to consider the different types of these schools, for complaints are often voiced—particularly by business men—that widespread misconceptions exist as to the significance of the terms used in educational circles. It will therefore be useful at this stage briefly to outline the characteristics of the more common types of schools.

Among the expressions employed "department" is one of the commonest and is used to signify a division of a school under a head teacher. For instance, if a school has sufficient pupils to justify its division into, say, infant, junior and senior departments, each under a head, then reference may be made to "the Infant Department of . . . School," etc. Each of these departments is, however, for official purposes generally treated as a school (*u*). [743]

**Mixed Schools.**—The expressions "Boys'" and "Girls'" schools need no explanation, for they obviously provide education for children of each sex from the age of 7 or 8 years to 14 or 15 years. Where both boys and girls are taught under the same head, the school is usually

(*p*) Memo., para. 17.

(*q*) Memo., para. 18.

(*r*) Act of 1921, s. 153 (1); 7 Statutes 206.

(*s*) *Ibid.*, s. 153 (2).

(*t*) *Ibid.*, s. 153 (3).

(*u*) See The Education Code, 1926; S.R. & O., 1926, No. 856, Art. 1, definition of "school."

referred to as a "Mixed School," and if there are infants also in attendance, it is termed a "Mixed and Infants' School."

Owing to the re-organisation of schools in accordance with the Hadow Report (*a*), the all-age school is disappearing, particularly in populous areas. In rural areas, however, where there are too few pupils to form separate junior and senior departments, the mixed school must, of necessity, continue as such. [744]

**Nursery Schools.**—Although normally children do not attend school until the age of 5 years, a local education authority may supply, or aid the supply of, nursery schools or classes for children over the age of 2 years and under the age of 5 years. This may be done where such provision is necessary or desirable for the children's healthy physical and mental development (*b*).

The fundamental purpose of the nursery school or class is to reproduce the healthy conditions of a good nursery in a well-managed home, and thus to provide an environment in which the health of the young child—physical, mental and moral—can be safeguarded.

The training of the nursery stage should be a natural training, not an artificial one. Its aim is not so much to implant the knowledge and the habits which civilised adults consider useful, as to aid and supplement the natural growth of the normal child (*c*). The subject is dealt with more fully at pp. 210—212, *ante*. [745]

**Infant Schools.**—It is the special function of the infant school to provide for the educational needs of the years of transition which separate babyhood from childhood, and, in particular, to supply children between the ages of 5 and 7 years with what is essential for their healthy growth, physical as well as intellectual and moral, during this stage of development.

The infant school is concerned with the lower stage of primary education up to the age of seven. The chief requirements of the curriculum is that it should be thought out in terms of activity and experience, rather than of knowledge to be acquired or facts to be stored (*c*). [746]

**Junior Schools.**—Primary education ends when the pupil is over 11 years and consists of two stages; (1) that provided in an infant school from the age of five to over seven; (2) that provided in a junior school from the age of over seven to over eleven.

Though in framing the curriculum for children between the ages of 7 and 11 years it is necessary to build upon the foundation laid in the infant school and to keep in view the secondary school, the main care should be to supply the pupils with what is essential to their healthy growth, physical as well as intellectual and moral, during this stage of their development.

As in the infant school, the curriculum should be thought out in terms of activity and experience, rather than of knowledge to be acquired or facts to be stored. An important feature should be physical training (*d*).

(*a*) See title CENTRAL AND SENIOR SCHOOLS.

(*b*) Act of 1921, s. 21; 7 Statutes 140.

(*c*) See the Report of the Consultative Committee of the Board of Education on "Infant and Nursery Schools," 1933.

(*d*) See the Report of the Consultative Committee of the Board of Education on "The Primary School," 1931.

Where numbers justify it, junior schools are frequently divided into boys' and girls' departments. When boys and girls are taught under the same head, the school is usually termed "Junior Mixed Schools." [747]

**Senior and Central Schools.**—The age of eleven and over marks the dividing line between primary and post-primary or secondary education. At that age the children should pass either into the senior classes of a mixed school, to a senior or central school or to a secondary school.

Whether a child proceeds to a senior or central school or class, or to a secondary school, will largely depend upon his attainments and potentialities, and the ability of his parents to maintain him until he is 16 years of age, as he may leave a senior or central school or class at the end of the term in which he attains 14 years of age, but, if admitted to a secondary school, he should continue in attendance until he is at least 16 years of age.

In senior or central classes or schools the curriculum in the last two years should be practical in the broadest sense and brought into direct relation with the facts of everyday life. It has been recommended that every effort should be made to secure a close communication between the work in the school and the pupils' further education after leaving school (e).

This part of the subject is dealt with more fully in the title **CENTRAL AND SENIOR SCHOOLS.** [748]

**Marine Schools and Schools attached to Institutions.**—Although a local education authority may maintain as a public elementary school a marine school or any other school which forms part of an institution in which children are boarded, they cannot be compelled to do so. Should they refuse to maintain a school of this type, the refusal would not render the school incapable of receiving a parliamentary grant, but where the school is recognised by the Board of Education as a public elementary school, grants may be paid direct by the Board of Education (f). [749]

#### PROVISION AND MAINTENANCE OF PUBLIC ELEMENTARY SCHOOLS

**Duty of Authority.**—It is the duty of local education authorities for elementary education (g) to maintain and keep efficient all public elementary schools within their area which are necessary and to provide such additional school accommodation as is, in the opinion of the Board of Education, necessary. That is, they must provide sufficient accommodation in public elementary schools for all the children resident in their area for whose elementary education sufficient and suitable provision is not otherwise made (h). This provision and maintenance must be in accordance with the provisions of the Act.

Although a local education authority are only required to provide elementary school accommodation for children who reside in their area and to maintain public elementary schools which are within their

(e) See the Report of the Consultative Committee of the Board of Education on "The Education of the Adolescent," 1926.

(f) Act of 1921, s. 25; 7 Statutes 141. See also Art. 25 of Education Code, 1926 (S.R. & O., 1926, No. 856).

(g) For these, see Act of 1921, s. 3 (1); 7 Statutes 131.

(h) Act of 1921, s. 17 (1); 7 Statutes 137.

area, occasionally it is more convenient to erect a school on a site outside the area for the use of children resident within it. With the consent of the Board of Education, this may be done, but only after consultation with the local education authority of the area in which the proposed site is situated, although it would seem that this authority have no power to prevent a consent being given by the Board. For the purposes of the Education Act, a school erected on such a site is deemed to be within the area of the authority providing it (i). [750]

It is impossible to prescribe any formula that can be applied to ascertain the number of school places which should be provided in order that a local education authority may discharge their duty in this matter. Some authorities take a census of the child population of the area to be served by the school, or estimate their requirements by having regard to the number of houses in their area and provide school places on a basis varying from one-half to one-and-a-half places per house. Some years ago, it was estimated that the number of places would be one-sixth of the total population of an area.

It will, however, be obvious that to-day no such arbitrary standard could be tenable for a wide area or for long. Such factors as the social status of the inhabitants, the size of families, the density of houses, the facilities for secondary and technical education, all bear on the problem of school accommodation. At the present time, in determining what accommodation is necessary, the Board of Education appear to be largely guided by the reports of their inspectors, after having considered all the available data relating to the appropriate factors which operate in an area. [751]

It is the practice of the Board officially to recognise each public elementary school as providing accommodation for a specified number of children. In fixing this recognised accommodation of a classroom, the area, shape and general arrangement (position of doors, heating apparatus, etc.) would be taken into consideration, but, in general, an allowance of 10 square feet of floor space for each infant or junior child and 12 square feet for each senior child would have to be allowed, with a maximum of 50 pupils for a class of infant or junior children and 40 for seniors.

The number of children ordinarily attending a school or centre must not exceed the recognised accommodation and classrooms must not be habitually overcrowded (k).

A local education authority's duty to provide public elementary schools is limited to the provision of instruction to scholars who at the close of the school year will not be more than 16 years of age (l). This limit may, with the consent of the Board of Education, be extended in the case of a school, if no suitable higher education is available within a reasonable distance of the school (m). [752]

**Failure to Provide School Accommodation.**—If a local education authority fail to provide the additional school accommodation which in the opinion of the Board of Education is necessary in any part of

(i) Act of 1921, s. 17 (2); 7 Statutes 138.

(k) Education Code, 1926, Art. 6.

(l) Act of 1921, s. 26 (2); 7 Statutes 141; and Board of Education Circular, 1835, dated July 1, 1924. But see "School Attendance," *ante*, pp. 312 *et seq.* The school year is the period for which annual grants are paid, see s. 170 (7) of the Act (7 Statutes 213).

(m) Act of 1921, s. 26 (2) (a).

their area, the Board of Education may, after holding a public inquiry, make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duty. This order may be enforced by a writ of *mandamus* (*n*).

A more effective way, perhaps, of dealing with recalcitrant authorities is by means of the power under sect. 118 (4) of the Act (*o*) to reduce or withhold grants. If a local education authority fail to perform any of their duties under the Act—which includes the duty of providing schools—then the Board of Education may reduce or withhold the grant otherwise payable to the authority. The section provides that if the reduction of grant exceeds £500 or the produce of a half-penny rate, whichever is the less, the Board must lay before Parliament a report stating the amount of and reasons for the deduction. There is no direct appeal from a decision of the Board in this matter.

[753]

**Maintenance of Public Elementary Schools.**—The duty of a local education authority under sect. 17 (1) of the Act (*p*) to “maintain and keep efficient all public elementary schools within their area which are necessary” refers to both provided and non-provided schools. The maintenance of non-provided schools will be dealt with in detail in the title **NON-PROVIDED SCHOOLS**, but to both types of schools will apply the ruling that the expression “maintain and keep efficient” as applied to a school, must necessarily include, not only what has been described as the “scholastic system” which is to be enforced, but also the place where the duty is to be performed by those who have to keep the school efficient for the scholars (*q*).

In general, the maintenance of provided schools will include the provision of teaching and caretaking staff; the provision of books, stationery, apparatus, equipment and furniture; heating, lighting and cleaning the school; paying rates and road making charges; keeping the building, playground and playing fields in a safe condition for the children. Should a local education authority be negligent in their duty and, as a result, a child is injured, then the local education authority may be liable in damages. This aspect of the subject is dealt with in the title **ACCIDENTS** on pp. 16—21 of Vol. I.

The Board of Education have prescribed that the premises of a school must be sufficient, clean and healthy and must be safe in case of fire. There should be suitable and sufficient sanitary and cloakroom accommodation for the children and teachers. The school must also be adequately lighted, warmed, ventilated, cleaned and drained. It should be kept in proper repair and must be suitably arranged, furnished and equipped for instruction (*r*). [754]

**Conduct of Public Elementary Schools.**—The duty of the local education authority to provide and maintain all public elementary schools within their area that are necessary, must be performed in accordance with and subject to the provisions of the Act (*s*). This section of this article will therefore deal with those considerations that

(*n*) Act of 1921, s. 150; 7 Statutes 205.

(*o*) 7 Statutes 194.

(*p*) *Ibid.*, 137.

(*q*) *Per Lord HALSBURY in Ching v. Surrey County Council*, [1910] 1 K. B. 736; 19 Digest 556, 17.

(*r*) Education Code, 1926, Art. 5 (a).

(*s*) Act of 1921, s. 17 (1); 7 Statutes 187.

consequently have to be borne in mind in the conduct of a public elementary school.

The first important point is the "Conscience Clause" in sect. 27 (1) of the Act (*t*). This forbids it to be a condition of a child's admission to, or continuance at, a public elementary school that it shall attend or refrain from attending any Sunday school, or any place of religious worship. Neither must it be a condition that a child shall attend any religious observance or instruction in religious subjects in the school or elsewhere, from which he may be withdrawn by his parent. If a child is so withdrawn by his parent he must not be required to attend school on any day exclusively set apart for religious observance by the religious body to which the parent belongs.

Parent, in this as in most cases under the Act, includes guardian and every person who is liable to maintain or has the actual custody of the child (*u*).

It has been decided that Ascension Day is a day exclusively set apart for religious observance by members of the Church of England (*a*).

[755]

The Act does not specify how a child shall be withdrawn from religious instruction, but it is submitted that a child may properly be given secular instruction while other pupils are receiving religious instruction, and that in such an instance the parent has then no right to withdraw the child from the school premises.

Further, the scripture or religious instruction lesson must be given at the beginning or end or the beginning and end of a session, and the time or times must be inserted in the school time-table (*b*). Not only must the time-table be approved by the Board of Education (this is usually done by H.M. Inspector of Schools for the district in which the school is situated) but it must be kept permanently and conspicuously affixed in every schoolroom (*b*). No pupil who is withdrawn from religious instruction or observance by his parent is to forfeit any of the other benefits of the school.

A school must be open at all times to the inspection of any of H.M. Inspectors (and in the case of public elementary schools the Inspectors do not as a rule give a preliminary notice of inspection, although dates of inspection are fixed when secondary schools are to be inspected), but such an inspector must not inquire into any religious instruction given at the school or examine any pupil in religious knowledge or in any religious subject or book (*c*). [756]

A copy of sect. 27 of the Education Act, 1921, must be conspicuously put in every public elementary school (*d*). If any of these requirements as to religious instruction and observances are infringed, the local education authority should inform the Board of Education (*e*).

In council (or provided) schools, no religious catechism or religious formulary which is distinctive of any particular denomination may be taught (*f*).

The Act also requires that a school shall be conducted in accordance

(*t*) 7 Statutes 142.

(*u*) Act of 1921, s. 170 (12); 7 Statutes 213.

(*a*) *Marshall v. Graham, Bell v. Graham*, [1907] 2 K. B. 112; 19 Digest 567, 85.

(*b*) Act of 1921, s. 27 (1) (*b*); 7 Statutes 142.

(*c*) *Ibid.*, s. 27 (1) (*c*).

(*d*) *Ibid.*, s. 27 (1).

(*e*) *Ibid.*, s. 27 (2).

(*f*) *Ibid.*, s. 28 (1); 7 Statutes 143.

with the conditions required to be fulfilled by a public elementary school in order to obtain a parliamentary grant. Details of these conditions are now given. [757]

**Conditions to be Fulfilled to Obtain a Parliamentary Grant.**—The Board of Education may make regulations (g) for the payment to local education authorities out of moneys provided by Parliament of annual substantive grants subject to conditions and limitations. In virtue of this the Board of Education issue grant regulations of which the Elementary Education Grant Regulations, 1932 (h), apply to the subject under consideration. Grants are dealt with more fully under the heading EDUCATION FINANCE.

A school must comply not only with the Act, but also (i) with the following regulations, in order to be recognised by the Board of Education :

- (1) Every school or centre must be kept on a satisfactory level of efficiency and must be open to inspection by an inspector.
- (2) The schools maintained by an authority must be organised with due regard to the circumstances and needs of the locality and must be so co-ordinated as to ensure, among other things, that adequate provision is made for practical instruction and for courses of advanced instruction for the older or more intelligent children.
- (3) New premises or enlargements or alterations of existing premises and plans thereof must be approved unless the Board otherwise direct (k).
- (4) The number of children ordinarily attending a school or centre must not exceed the recognised accommodation, and classrooms must not be crowded. Recognised accommodation may be revised from time to time by the Board.
- (5) The authority must have reasonable facilities for medical inspection on the premises of any school.
- (6) In any school or centre approved for the purpose, persons in training for the teaching profession must be allowed to attend on approved conditions for practical instruction in teaching or for observation.
- (7) The secular instruction in a school or centre must be in accordance with a suitable curriculum and syllabus framed with due regard to the organisation and circumstances of the school or schools concerned.
- (8) The authority must maintain an approved establishment of suitable teachers for their area and must satisfy the Board, if required, as to its distribution.
- (9) A pupil must not be refused admission to or excluded from school on other than reasonable grounds. [758]

It is important to note that if there are any provisions in any instrument regulating the trusts or management of a school which are inconsistent with the conditions prescribed for the receipt of grants

(g) Act of 1921, s. 118 (1); 7 Statutes 193.

(h) S.R. & O., 1932, No. 66.

(i) Education Code, 1926; S.R. & O., 1926, No. 856.

(k) For the condition as to the maintenance of the school premises, see *ante*,

from moneys provided by Parliament, they cease, by virtue of sect. 121 of the Act (*l*) to operate, or operate only subject to any modifications that may be necessary in order to render the instrument consistent with the regulations of the Board. This, of course, only applies in cases where it is desired that Board of Education grants shall be made to such a school.

The detailed conditions required to be fulfilled in order that a Parliamentary grant may be earned for a public elementary school are set out in sects. 27, 28, 29 (2) and 120 and the Sixth Schedule to the Act (*m*). These requirements have been dealt with either in the present title or the title EDUCATION FINANCE. [759]

#### MANAGERS (EXCLUDING MANAGERS OF A NON-PROVIDED SCHOOL)

This part of this article will deal with managers of provided schools only, and reference will only be made to managers of non-provided schools when they cannot be considered apart. The duties of managers of non-provided schools will be dealt with in the title NON-PROVIDED SCHOOLS.

Where the local education authority are a county council, there must be a body of managers for each provided public elementary school except where there is a grouping (see *infra*) (*n*). Such a body of managers must consist of not more than six persons, of whom not more than four should be appointed by the county council and not more than two by the minor local authority (*o*). But where a school situated in a county appears to the county council to serve the area of more than one minor local authority, the council should make arrangements for the joint appointment of managers by the authorities concerned (*p*).

Should a local education authority consider that a body of six managers is insufficient, they may increase the total number, but the proportion appointed by the local education authority (four) and the minor local authority (two) must be preserved (*q*).

It should be noted that the minor local authority need not appoint the managers from among their own members.

Where, however, the local education authority are the council of a borough or urban district, they are under no statutory obligation to appoint a body of managers for each school, but if they do so they may appoint managers consisting of as many members as they wish (*r*). In a number of cases, such local education authorities do not appoint managers, but provide for the appointment of a school management sub-committee of the education committee who deal with those matters for all the public elementary schools which would normally be dealt with by managers. [760]

If a school has classes in practical or advanced instruction for children attending from more than one public elementary school, as in

(*l*) 7 Statutes 194.

(*m*) *Ibid.*, 142, 143, 194, 224.

(*n*) Act of 1921, s. 30 (1); 7 Statutes 146.

(*o*) The minor local authority is defined by s. 170 (15) as meaning the council of any borough or urban district or the parish council (or where there is no parish council then the parish meeting) of any parish which is served by the school.

(*p*) Act of 1921, s. 30 (3); 7 Statutes 146.

(*q*) *Ibid.*, s. 30 (5) (b).

(*r*) *Ibid.*, s. 30 (1).

the case of central and senior schools, it may be managed in the way the local education authority think most appropriate (s). [761]

**Grouping of Schools under one Management.**—Instead of having a separate body of managers for each school, it is possible to group a number of schools under one body of managers (t). This is frequently done by a county council so far as the schools in a town are concerned. Some county councils appoint a "local education committee" which combines the functions of bodies of managers of public elementary schools with those of governors of the secondary schools. This may be done not only in the case of council schools but also, with the consent of the managers, in the case of non-provided schools (u). When schools are thus grouped under a body of managers, the local education authority may decide the number, proportion and manner of appointment of members, but in the case of non-provided schools there should be agreement between the local education authority and the managers of the schools concerned as to these matters. If the local education authority and the managers fail to agree, the Board of Education may determine the matter (a).

Where the local education authority are a county council, provision must be made for the representation of the minor local authority (b).

Any arrangement for the grouping of non-provided schools must remain in force for three years unless previously determined by the consent of the parties concerned (c). [762]

**Term of Office of Managers.**—It is strange, perhaps, but the Act contains no provision as to the duration of the period for which managers, whether appointed by the local education authority, the minor local authority, or as foundation managers of a non-provided school, may be appointed. There is, however, a provision to the effect that a manager of a non-provided school who is appointed by the local education authority or the minor local authority may resign or be removed by the authority who appointed him (d).

It is the practice of some local education authorities to appoint their managers and local committees annually as from April 1, or, in the case of municipal boroughs, as from November 9. [763]

**Meetings and Proceedings of Managers.**—The Third Schedule to the Act (e) contains provisions regulating the meetings and proceedings of managers of which the most important are as follows: A body of managers may choose their chairman, except in cases where there is an *ex-officio* chairman, and regulate their quorum and proceedings in such manner as they think fit, subject, in the case of the managers of a provided school, to any directions of the local education authority. The quorum is not less than three, or one-third of the whole number of managers, whichever is the greater.

Every question at a meeting is determined by a majority of the votes of the managers present and voting on the question, and in case of an equal division of votes the chairman of the meeting has a second or casting vote. The proceedings of a body of managers are not invalidated by any vacancy in their number, or by any defect in the election, appointment or qualification of any manager. Meetings must be held at least

(s) Act of 1921, s. 30 (5) (d); 7 Statutes 147.

(u) *Ibid.*, s. 33 (1); 7 Statutes 148.

(b) *Ibid.*, s. 33 (3); 7 Statutes 149.

(d) *Ibid.*, Sched. III. (4); 7 Statutes 220.

(t) *Ibid.*, s. 30 (5) (a).

(a) *Ibid.*, s. 33 (2).

(c) *Ibid.*, s. 33 (4).

(e) 7 Statutes 220.

once in every three months, and any two managers may convene a meeting. Minutes must be kept in a book, and this is open to inspection by the local education authority. [764]

**Powers of Managers.**—The managers of council schools have only power to deal with such matters relating to the school or schools under their management as the local education authority determine (f). The authority may impose any conditions and restrictions they desire, but the extent of the delegated power is usually determined by local circumstances.

Where the local education authority are a county council, it naturally follows that considerable powers are exercised by the managers of schools or groups of schools. These may include the following: interviewing candidates for appointment as teachers, caretakers, etc., and appointing them, subject to confirmation by the authority; conducting general correspondence (except that with the Board of Education or other Government departments) relating to the school or schools; supervising the work of the schools and discussing curriculum, etc., with the head teacher; examining the school time-tables periodically; checking registers of attendance and examining the log books and other official school records; seeing that the school buildings are clean and in a good state of repair; scrutinising and approving requisitions for school supplies of books, stationery, apparatus and equipment. In a borough or urban district these duties are frequently carried out by a school management or some other sub-committee (g). [765]

#### STAFFING OF PUBLIC ELEMENTARY SCHOOLS

A local education authority must maintain an approved establishment of suitable teachers for their area and must satisfy the Board of Education, if required, as to their distribution (h). Every school must have a head teacher who is responsible for the general control and supervision of the instruction and the discipline. Unless an exception to the rule is approved, he must be a certificated teacher and must take a definite and substantial share in the actual instruction (i).

Although the majority of assistant teachers must be certificated teachers, yet uncertificated teachers, teachers of special subjects or, in certain circumstances, supplementary teachers (k) and in rural schools persons under the age of 18 years not otherwise recognised as teachers, may be employed, subject to satisfactory medical certificates, to assist in teaching as monitors. They must not, however, be made responsible for the secular instruction of a class or part of a class (l). [766]

A clerk in Holy Orders or the regular minister of a congregation can only be recognised as a teacher in the capacity of an occasional teacher (m).

The standard of the Board of Education in regard to the size of classes is a roll not exceeding fifty for junior and infant classes and not exceeding forty in senior classes. This and other matters relating to the staffing in public elementary schools were dealt with by the Board

(f) Act of 1921, s. 35 (1); 7 Statutes 149.

(g) As to powers of managers of non-provided schools, see title NON-PROVIDED SCHOOLS.

(h) The Education Code, 1926 (S.R. & O., 1926, No. 856, Art. 11).

(i) *Ibid.*, Art. 12.

(l) *Ibid.*, Art. 15.

(k) See *ibid.*, Sched. II.

(m) *Ibid.*, Art. 14.

of Education in a circular addressed to local education authorities in 1933 (*n*). [767]

CURRICULUM OF PUBLIC ELEMENTARY SCHOOLS  
(See also title EDUCATION)

The Board of Education do not make rules as to the curriculum to be followed in public elementary schools; in fact the greatest latitude is given to head teachers and local education authorities. The Board's requirements are few. They require that the secular instruction in a school or centre shall be in accordance with a suitable curriculum and syllabus framed with due regard to the organisation and circumstances of the school concerned. They also expect that information as to the curriculum, syllabus and time-table shall be accessible to their Inspectors and that there shall be a time-table showing the times of the instruction given in each subject (*o*).

The views of the Board of Education on curriculum are contained in their "Handbook of Suggestions for Teachers." These are not designed to impose regulations supplementary to those contained in the Code. "The only uniformity the Board of Education desire to see in the teaching of public elementary schools is that each teacher shall think for himself and work out for himself such methods of teaching as may use his powers to the best advantage and be best suited to the particular needs and conditions of the school. Uniformity in details of practice is not desirable, even if it were attainable. But freedom implies a corresponding responsibility in its use" (*p*). Certain subjects in the curriculum are required by statute, for instance the provision of practical instruction (*q*) and reading, writing and arithmetic (*r*). [768]

REORGANISATION OF PUBLIC ELEMENTARY SCHOOLS

The expression "reorganisation" is one that has figured very largely in the administration of public elementary schools since the issue of the Report of the Consultative Committee of the Board of Education on the Education of the Adolescent ("The Hadow Report"). The process of "reorganising" schools consists in dealing with a group of schools in such a way that it shall consist of a central or senior school for children over the age of 11 years, together with two or three junior schools, which contribute pupils to the central or senior school after the age of 11 years. Such a group, in many cases, would previously have consisted of mixed schools, each providing education for children between the ages of 7 or 8 and 14 years. When schools are reorganised, the aim is to provide for the post-primary education of a child to be in a different school or department from that in which he received his primary education.

In order to render buildings suitable for senior children, craft rooms, laboratories, domestic science, etc., rooms have frequently to be provided.

Some authorities have found that, for geographical reasons, reorganisation has been impossible, while others, in areas in which there

(*n*) Board of Education Circular No. 1427, May 22, 1933—"Staffing in Public Elementary Schools."

(*o*) The Education Code, 1926, Art. 10.

(*p*) Prefatory note to Handbook of Suggestions for Teachers.

(*q*) Act of 1921, s. 20; 7 Statutes 139.

(*r*) *Ibid.*, s. 42; *ibid.*, 153.

is a growing population, have been able to carry out schemes of re-organisation as new schools are built.

A vital point is often the willingness, or otherwise, of managers of non-provided schools to co-operate with the local education authority in this matter. [769]

#### TRANSFER OF NON-PROVIDED SCHOOLS TO LOCAL EDUCATION AUTHORITY

The position sometimes arises that the managers of a non-provided school desire to transfer the school to the local education authority. This sometimes happens when there are insufficient funds to maintain the school buildings or to provide for necessary extensions or alterations.

Such a transfer is permitted by sect. 38 of the Act (*s*) and details of the necessary arrangements are given in Part I. of the Fourth Schedule to the Act (*t*).

The transfer may provide for an absolute conveyance to the local education authority of all the interest in the premises of the school or institution possessed by the managers or by any person who is trustee for them, or for the school or institution; or the premises may be leased with or without restrictions, either at a nominal rent or otherwise, to the authority. The lease may also provide that the authority shall use the premises during part of the week—during school hours, for instance—and that the managers or some other person shall use the premises during the remainder of the week. [770]

Any such arrangements must be approved by the Board of Education.

Part II. of the Fourth Schedule (*u*) allows the local education authority to re-transfer a school to a body of managers qualified to hold the interest in the premises under the trusts as they existed before the transfer. Any transfer of a public elementary school to or from a local education authority must be treated as the provision of a new school and public notice of the intention must be given (*a*). [771]

#### BUILDING OF NEW SCHOOLS AND ENLARGEMENT

**Proposals to Build New Schools.**—When a local education authority, or any other persons—a religious body, for instance—propose to provide a new public elementary school or to enlarge an existing school to such an extent that the Board of Education consider it to amount to the provision of a new school, they must give public notice of their intention to do so (*b*). When such notice has been given, the managers of any existing school, the local education authority (where they are not themselves the persons proposing to provide the school) or any ten ratepayers in the area in which it is proposed to provide the school, may appeal to the Board on the ground that the school is not required, or that another school is better suited to meet the wants of the district. This appeal must be made within three months after the public notice is given (*b*).

If a school is provided in contravention of the decision of the Board, it will, on such an appeal, be treated as unnecessary (*c*) and

(*s*) 7 Statutes 151.

(*t*) *Ibid.*, 221.

(*u*) *Ibid.*, 222.

(*a*) Act of 1921, s. 18 (3); 7 Statutes 139.

(*b*) *Ibid.*, s. 18 (1).

(*c*) *Ibid.*

consequently no parliamentary grant would be made in respect of it (d). [772]

The provision of premises for classes in practical instruction or advanced instruction for children attending from more than one public elementary school is not deemed to be the provision of a new school, so no public notice is necessary (e). Similarly the provision of schools by a local education authority for blind, deaf, defective or epileptic children or any other schools which, in the opinion of the Board of Education, are not of a local character, need not be treated as public elementary schools in respect of which a public notice must be given (f).

The procedure to be followed when publishing notices under sect. 18 should follow that suggested by the Board of Education (g).

In deciding on any appeal as to the provision of a new school, the Board must have regard to the interests of secular instruction, the wishes of parents as to the education of their children and the economy of the rates (h). [773]

**Enlargement.**—When a local education authority or any other body—the managers of a non-provided school, for instance—desire to enlarge a public elementary school, the Board of Education on application will state whether, in their opinion, the enlargement is such as to amount to the provision of a new school. Should they decide in the affirmative, it will be necessary for public notice of the intention to be given and the procedure stated *supra* under "Proposals to build new Schools" must be followed (i). [774]

#### CLOSURE OF SCHOOLS

In regard to the closure of a council school, a local education authority may discontinue any school provided by them if they satisfy the Board of Education that the school to be discontinued is unnecessary (k).

Power is given to the Board of Education in case of a dispute to determine without delay whether a school is necessary or not, but in reaching a decision they must have regard to the interest of secular instruction, the wishes of the parents as to the education of their children and the economy of the rates (l).

Where there is a dispute as to whether a school shall be closed or not, the Board must not, if the average attendance at the school is thirty or over, treat the school as unnecessary unless they are satisfied that accommodation for the pupils is available in some other public elementary school provided by the same local education authority and reasonably accessible (m). [775]

In the case of a non-provided school the alternative accommodation must be found in a school of the same denominational character within the area of the local education authority (n).

(d) Act of 1921, s. 19 (2); 7 Statutes 139.

(e) *Ibid.*, s. 18 (4).

(f) *Ibid.*, s. 18 (5).

(g) Board of Education Circular No. 1290—"Procedure for Publication of Notices under Section 18 of the Education Act, 1921."

(h) Act of 1921, s. 19 (1); 7 Statutes 139.

(i) *Ibid.*, s. 18 (2); *ibid.*, 138.

(k) *Ibid.*, s. 17 (4).

(l) *Ibid.*, s. 19 (1).

(m) Education (Necessity of Schools) Act, 1933, s. 1 (2), (3); 26 Statutes 130.

(n) *Ibid.*, s. 1 (3) (b).

The general effect of the Education (Necessity of Schools) Act, 1933, is to allow the closure of small schools. Those that have an average attendance of below thirty scholars may be closed unconditionally, but in the case of schools with an average attendance of thirty or over alternative accommodation as stated above must be shown. Prior to the passing of this Act, no public elementary school could be closed unless the average attendance were less than thirty (*o*).

A point of interest arises as to whether in the provisions above-mentioned "the discontinuance" of a school as unnecessary means the discontinuance of the attendance of the particular pupils attending or the closure of the building as a school. It is submitted that the latter contingency is contemplated, for in the event of all pupils leaving a school, owing to the opening of another school in the vicinity and the old school being discontinued as unnecessary by the local education authority and the Board of Education, it would be necessary to issue a public notice under sect. 18 of the Act of 1921 (*p*) as for the provision of a new school, should it be desired subsequently to use the building again as a public elementary school. **[776]**

#### CANAL BOAT CHILDREN

Special arrangements have been made in the Act of 1921 to deal with the special case of children living on canal boats. If a boat is registered under the Canal Boats Acts, 1877 and 1884 (*q*), both the parent of a child in such a boat, and the child, are deemed to be resident in the place at which the boat is registered as belonging. This means that for the purpose of the attendance of the children at a school, the bye-laws of the authority of the area apply (*r*).

On the other hand, if the child is actually attending school or receiving efficient elementary instruction in the area of some other authority, then, if the local education authority of the area of registration are satisfied on this matter, they must give the parent a certificate to this effect. Thereupon the parent and child are considered resident in, and subject to the bye-laws of the authority of, the area in which the child attends school or receives instruction. These certificates may be rescinded or varied either on the application of the parent or by the local education authority of the place where the boat is registered as belonging, if they are satisfied that the child is not receiving efficient elementary instruction or properly attending school (*s*).

In the Board of Education's annual report to Parliament, reference must be made to the manner in which the provisions in the Act relating to canal boat children are being enforced. For this purpose H.M. Inspectors must communicate with the local education authorities in their district (*t*).

In 1930, a Canal Boats Bill was introduced by a private member, but it did not become law. It provided (*inter alia*) that no child of school age should live on a canal boat, except during week-ends and holidays. **[777]**

(*o*) See the repeal in part of s. 19 (1) of the Act of 1921 made by s. 1 (1) of the Education (Necessity of Schools) Act, 1933.

(*p*) 7 Statutes 188.

(*q*) 13 Statutes 788, 803. See also title CANAL BOATS in Vol. II.

(*r*) Act of 1921, s. 50 (1); 7 Statutes 158.

(*s*) *Ibid.*, s. 50 (2).

(*t*) *Ibid.*, s. 50 (4).

### LEGAL PROCEEDINGS

Legal proceedings arising out of the failure of a parent to cause his child to receive efficient instruction or to attend school are dealt with under "School Attendance" (*ante*), but most of the following provisions will apply to complaints for non-attendance at school as well as other proceedings under the Act.

All offences and fines under the Act or the bye-laws made thereunder are punishable and recoverable on summary conviction (*u*).

In order to enforce the attendance of a child before a court, a justice of the peace may summon a parent or employer of a child or young person of school age for this purpose. Should the person summoned fail without reasonable excuse to comply with the summons, he will be liable to a fine not exceeding 20s. (*a*).

The onus of proving that a child or young person is not of the alleged age is placed on the defendant (*b*). Also, where a local education authority are, owing to the default of the managers or proprietor of an elementary or continuation school, unable to ascertain whether a child or young person attends that school in conformity with the Act and the bye-laws, the onus of proof that he has attended is placed on the defendant (*c*).

Any person may appear in any proceedings relating to school attendance, or the education of blind, deaf, defective or epileptic children, by any member of his family or any other person authorised by him on that behalf (*d*). [778]

### LONDON

**New Elementary Schools.**—Certain special conditions are enacted with respect to the provision of new schools in the Administrative County of London. The local education authority are not permitted to decide on a site for a new school within the area of any metropolitan borough until after consultation with the council of the borough in which the proposed site is situated (*e*). Where it is proposed to acquire the site compulsorily, not merely consultation, but the concurrence of the borough council is necessary, and the Board have no power to make a compulsory purchase order without such concurrence, unless they are satisfied that it should be dispensed with. These provisions, except in the case of compulsory purchase, do not apply to sites required for the enlargement of existing schools. Nor do they apply to schools provided by the local education authority for blind, deaf, epileptic, or defective children or any other schools which, in the opinion of the Board, are not of a local character (*e*). The notices to be given under sect. 18 (1) of the Act of 1921, regarding the provision of new schools, are restricted as compared with the rest of the country in that as regards London notices required to be sent to managers of public elementary schools need only be sent to those within  $\frac{3}{4}$  of a mile instead of 2 miles (*f*). [779]

**Provided Elementary Schools: Managers.**—Every public elementary school provided by the local education authority for the Administrative

(*u*) Act of 1921, s. 139; 7 Statutes 202.

(*a*) *Ibid.*, s. 140.

(*b*) *Ibid.*, s. 141.

(*c*) *Ibid.*, s. 142.

(*d*) *Ibid.*, s. 146; 7 Statutes 204.

(*e*) *Ibid.*, s. 18 (5); 7 Statutes 139.

(*f*) S.R. & O., 1922, No. 1288.

County of London within the area of any metropolitan borough must have a body of managers (g). The number of managers and the manner in which schools, where it is thought desirable, should be grouped under one body of managers, must be determined by the council of each borough after consultation with the local education authority, subject to the approval of the Board (g).

It is provided that two-thirds of these managers must be appointed by the borough council and one-third by the local education authority. Not less than one-third of the whole body of managers must be women. The borough council and the local education authority must carry out any directions of the Board to give effect to this provision with respect to the inclusion of women (h).

Managers within London may not be appointed for longer periods than three years, but they may be re-appointed (i).

These rules do not apply to schools provided by the local education authority for the administrative county of London for blind, deaf, epileptic or defective children or any other schools which, in the opinion of the Board, are not of a local character (k). [780]

**Grouping of Schools under One Management.**—Sect. 33 of the Act of 1921 (l), dealing with the grouping of schools under one management, does not apply to the administrative county of London so far as schools provided by the local education authority are concerned. [781]

**Endowment of Non-Provided Schools.**—Sect. 41 (3) of the Act of 1921 (m), relating to endowments of non-provided schools does not apply to the administrative county of London, but there the Board may, on the application of the trustees of the endowment or the local education authority, direct that any money which would be payable to the county council under this section, shall be applied in manner provided by a scheme made by the Board. In such a scheme regard must be had primarily to the interests of the locality for which the benefits of the endowment were intended. [782]

**Legal Proceedings.**—Sect. 98 of the Children and Young Persons Act, 1933 (n) (which provides that a local authority may institute proceedings under the Act or Part I. of the Children Act, 1908), and sect. 145 of the Education Act, 1921 (o), as to the appearance of a local education authority in legal proceedings, were not repealed by the L.G.A., 1933, as regards London. [783]

(g) Act of 1921, s. 36 (1); 7 Statutes 150.

(h) *Ibid.*, s. 36 (2).

(i) *Ibid.*, s. 36 (3).

(k) *Ibid.*, s. 36 (4).

(l) 7 Statutes 148.

(m) *Ibid.*, 152.

(n) 26 Statutes 234.

(o) 7 Statutes 204.

## EMIGRANT RUNNERS AND PASSAGE BROKERS

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*See also title : REGULATED INDUSTRIES.*

**Introductory.**—The statute law relating to emigrant runners and passage brokers is contained in the Merchant Shipping Act, 1894 (*a*) (in this title called “the Act of 1894”), and the Merchant Shipping Act, 1906 (*b*).

By sect. 341 of the Act of 1894 (*c*), a passage broker is defined as being “any person who sells or lets or agrees to sell or let, or is anywise concerned in the sale or letting of, steerage passages in any ship proceeding from the British Islands to any place out of Europe not within the Mediterranean Sea.” The expression “steerage passenger” is defined by sect. 268 of the Act of 1894 (*d*) as meaning all passengers except cabin passengers, and by the same section the expression “steerage passage” is given a corresponding meaning; persons who may be deemed to be cabin passengers must be persons in respect of whom the conditions set out in para. 3 of sect. 268 are fulfilled. The selling or letting of passages falling within the scope of the provisions of the Act of 1894 as to passage brokers must be a selling or letting of a passage in a named ship sailing at a particular time (*e*). [784]

An emigrant runner is defined by sect. 347 of the Act of 1894 (*f*) as “any person other than a licensed passage broker or his *bona fide* salaried clerk [who] in or within five miles of the outer boundaries of any port, for hire or reward or the expectation thereof directly or indirectly conducts, solicits, influences or recommends any intending emigrant (*g*) to or on behalf of any passage broker, or any owner, charterer or master of a ship, or any keeper of a lodging house, tavern or shop, or any money changer or other dealer or chapman, for any purpose connected with the preparations or arrangements for a passage, or gives or pretends to give to any intending emigrant any information or assistance in any way relating to emigration.” [785]

The meaning of the reference to “within five miles of the outer boundaries of any port” is not quite clear. The term “port” is

(*a*) 18 Statutes 162 *et seq.*

(*b*) *Ibid.*, 445 *et seq.*

(*c*) *Ibid.*, 289.

(*d*) *Ibid.*, 260.

(*e*) *Morris v. Howden*, [1897] 1 Q. B. 378; 41 Digest 672, 5037.

(*f*) 18 Statutes 290.

(*g*) The term “emigrant” is not defined but apparently includes any person who intends to take a steerage passage on an emigrant ship as defined by s. 268 of the Act of 1894.

merely defined in sect. 742 of the Act of 1894 (*h*) as including "place," but in *Humber Conservancy Board v. Federated Coal and Shipping Co.* (*i*), it was decided that a Lloyd's signalling station, although a place, was not a port. The limits of each customs port are set out by a Treasury warrant made under sect. 11 of the Customs Consolidation Act, 1876 (*k*), and the area so defined usually comprises a large area of water and certain quays abutting thereon. Apparently the five-mile limit should be measured from the landward boundary of the customs port, not from the boundary of any port sanitary district which may have been set up under sect. 287 of the P.H.A., 1875 (*l*), or the boundary of the borough or urban or rural district.

Sect. 28 of the Merchant Shipping Act, 1906 (*m*), extends the provisions of the Act of 1894 (Part III.) relating to passage brokers (*n*) to persons in the British Islands who sell or let, or are concerned in the sale or letting of, steerage passages from any place in Europe not within the Mediterranean Sea.

Local authorities are concerned with the licensing of passage brokers and emigrant runners, but are not empowered to sue for penalties in respect of offences; the latter power is by sect. 356 of the Act of 1894 (*o*) conferred on emigration officers, chief and other authorised officers of customs, and persons authorised by the Board of Trade. [786]

**Local Authorities.**—By sects. 343, 348 of the Act of 1894 (*p*), the licensing authorities for passage brokers and for emigrant runners are the councils of county boroughs, non-county boroughs and urban and rural districts; in the administrative County of London the licensing authority are the justices in petty sessions (*q*). [787]

**Passage Brokers.**—Application for a licence as a passage broker must be made to the licensing authority for the place in which the applicant has his place of business; the applicant must prove that he has entered into and deposited one part of the bond required by sect. 342 of the Act (*r*), and that he has given to the Board of Trade at least fourteen days' notice of his application. The grant of a licence is discretionary (*s*), and by sect. 343 (2) notice of the grant must be given to the Board of Trade by the licensing authority.

Licences unless forfeited remain in force until January 31 in the year following the grant, and may be ordered to be forfeited by the court of trial on conviction of the licensee for an offence against Part III.

(*h*) 18 Statutes 411.

(*i*) [1928] 1 K. B. 492; 41 Digest 907, 8002.

(*k*) 16 Statutes 290.

(*l*) 13 Statutes 745.

(*m*) 18 Statutes 452.

(*n*) But not emigrant runners.

(*o*) 18 Statutes 293.

(*p*) *Ibid.*, 289, 291.

(*q*) S. 27 (1) (d) of L.G.A., 1894; 10 Statutes 797, transferring outside London the powers of justices as to the licensing of passage brokers and emigrant runners, is spent and was repealed by L.G.A., 1933.

(*r*) 18 Statutes 289. This is a bond, with two sureties approved by the emigration officer, or a policy of a guarantee society approved by the Treasury, in the sum of £1,000. It is exempt from stamp duty and must be renewed on each occasion of obtaining a licence.

(*s*) The wording of s. 343 is "may grant," whereas in s. 348 (emigrant runners) the enabling words are "may . . . grant if they think fit" but the statutory form of passage broker's licence given in the Fourteenth Schedule to the Act of 1894, implies that the licensing authority can exercise a discretion even though the bond and notice are in order. This form was repealed by the Merchant Shipping Act, 1906, but the form prescribed by the Board of Trade by S.R. & O., 1912, No. 260, is similar on this point.

of the Act of 1894 (*t*). There is no statutory bar against an application for a new licence by a convicted person. [788]

**Emigrant Runners.**—The licensing authority for the place in which a person desires to act as an emigrant runner, may license him under sect. 348 of the Act of 1894 (*u*) on his application, accompanied by a recommendation in writing of an emigration officer, or of the chief constable or other chief officer of police for the place where the applicant wishes to act. The grant of the licence is discretionary, but the statutory recommendation of the emigration officer or police officer cannot be waived. The emigrant runner must lodge the licence with the nearest emigration officer, who on payment of a fee not exceeding 7*s.* supplies him with a badge. The licence remains in force until December 31 in the year in which it is granted unless previously revoked by a justice for an offence against the Act or for other misconduct or forfeited on conviction. There is no statutory bar against an application for a new licence by a person whose licence has been revoked or forfeited. [789]

**Appeal on Refusal of Licence.**—There appears to be no appeal against a refusal to grant a licence to an emigrant runner or passage broker. [790]

(*t*) Act of 1894, s. 344; 18 Statutes 290.

(*u*) 18 Statutes 291.

## EMIGRATION

*See also title : PUBLIC ASSISTANCE.*

The power of a county council (including the L.C.C.) or county borough council to assist emigration is contained in sect. 68 of the Poor Law Act, 1930 (*a*), which allows these authorities, with the consent of the M. of H., and in compliance with such rules, orders, and regulations (*b*) as he may prescribe, to procure or assist in procuring the emigration of (1) any orphan or deserted child under the age of sixteen who is chargeable to the county or county borough; (2) any other poor person who is chargeable, or would if relieved be chargeable, to that area; (3) any poor person having a settlement in the county or county borough.

Orphans and deserted children can be dealt with under this section only if chargeable to the poor law authority, but persons under sixteen who are neither orphans nor deserted children can be dealt with under heads (2) and (3). The terms "orphan" and "deserted child" are not defined specifically for the purposes of sect. 68, but in the absence

(*a*) 12 Statutes 1002.

(*b*) No rules, etc., appear to have been made.

of any relevant order or regulation of the M. of H. it would appear that an orphan is a child having no legitimate father or mother capable of acting as parent ; and a deserted child is a legitimate child deserted by both parents, or an illegitimate child deserted by the mother (c).

A council may not procure the emigration of an orphan or deserted child unless the child has given its consent before a petty sessional court held in or near the county or county borough (d), and a certificate (e) of the consent has been sent to the M. of H.

In practice emigration is usually arranged by the poor law authority through the Overseas Settlement Department, or with the aid of a voluntary agency. [791]

By sect. 69 (1) (d) and (11) of the L.G.A., 1888 (f), as in part repealed by L.G.A., 1933, a county council or county borough council may make advances to any persons or bodies of persons (including corporate bodies) in aid of the emigration or colonisation of inhabitants of the county or county borough, with a guarantee for repayment from any local authority in the county (g), or from the Government of any colony. The sect. confers a power of borrowing with the consent of the M. of H. for the purpose of making such advances, which borrowing power is now exercisable in accordance with the provisions of Part IX. of L.G.A., 1933. The qualification for assistance under L.G.A., 1888, is inhabitancy, and not settlement or actual or potential chargeability as under the Poor Law Act, 1930.

It is believed that this power has been almost a dead letter. It is necessary that the council making the advance should obtain a guarantee from another local authority or from the Government of a dominion or colony that the advance will be repaid to them. Naturally arrangements of this kind are not easy to effect.

Of recent years the number of persons whose emigration has been assisted under the Poor Law has been nearly negligible. Thus during the year ended December 31, 1933, the number of persons so assisted by the poor law authorities of England and Wales was 120 only, of whom 10 were orphan or deserted children (h). Before the war the number of persons assisted to emigrate by the poor law authorities was in 1911, 1021 ; in 1912, 965 ; and in 1913, 987 (i). [792]

(c) Cf. the definitions of "orphan" and "deserted child" contained in Art. 120 (relating to boarding out) of the Public Assistance Order, 1930 (S.R. & O., 1930, No. 185 ; 12 Statutes 1071).

(d) Semble, the justices forming the court need not have jurisdiction in the county or county borough ; the application for consent is made *ex parte*.

(e) The certificate must be signed by two justices present when consent is given.

(f) 10 Statutes 742, 743.

(g) Semble, this would not be applicable in a county borough.

(h) 15th Annual Report of M. of H. (Cmd. 4664), at p. 243.

(i) 43rd Annual Report of the Local Government Board (Cmd. 7444), at p. 149 of Part I.

## EMPLOYEES, RESPONSIBILITY FOR ACTS OF

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*See also titles :*

ACCIDENTS ; ACTIONS BY AND AGAINST LOCAL AUTHORITIES ; COMMON LAW CORPORATIONS ; CONTRACTS ; CRIMINAL LIABILITY OF LOCAL AUTHORITIES ;	DEFAMATION ; DUTIES AND POWERS OF OFFICERS ; MISFEASANCE AND NONFEASANCE ; NEGLIGENCE ; PUBLIC AUTHORITIES PROTECTION ; ULTRA VIRES .
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**Introductory.**—In dealing with questions as to the responsibility of a local authority for an act of an employee it is necessary to consider in the first place, whether, with reference to the act in question, the relationship of master and servant, or of principal and agent, subsists between the local authority and the employee.

In order to ascertain whether the relationship of master and servant exists the following points require examination : (i.) whether the servant is appointed by the local authority ; (ii.) whether the remuneration of the servant is paid by the local authority, and, if so, whether it is paid out of the general funds of the local authority, or whether the local authority pay out of funds provided by, and as agent for, some other authority ; (iii.) whether the local authority can dismiss or remove the servant, either with or without the consent of some other authority ; (iv.) whose orders (if any) the servant is bound to obey.

Speaking generally, the relationship of master and servant does not exist unless the local authority have the power of appointment and removal, pay the servant out of their funds, and can control the acts of the servant ; but such circumstances as the consents of superior authorities to appointment and removal, or the provision of the servant's remuneration (or of some part thereof) from Government grant or other sources, do not appear to negative the relationship of master and servant, if the local authority have control of the particular act of the servant which is the subject of consideration.

With regard to the question of principal and agent, the general law of contract applies, subject to such modifications as are noted below, and a local authority are responsible in civil proceedings for the acts of a servant who acts as agent if the act is expressly authorised, or is subsequently ratified, or if the local authority have expressly or by implication held out the servant as an agent for the particular purpose in question, or have adopted the act of the agent by acceptance of the benefit of, or by part performance of, a contract. If a question of

criminal responsibility arises, the peculiar position of a corporation in relation to the criminal law must be considered.

The question of responsibility for acts of employees will be discussed in relation to (1) contracts ; (2) torts ; (3) criminal responsibility. [793]

**Responsibility in Contract.**—On the subject of contracts generally, see title CONTRACTS.

Local authorities comprise bodies corporate and bodies not incorporated. A borough council (outside London) and the parish meeting of a rural parish (*a*), and certain statutory committees are examples of the second class of local authority. With the exception of municipal corporations, all local authorities are creatures of statute and can contract only within their respective statutory powers (*b*), and in accordance with any relevant statutory formalities and limitations. Acts which cannot be brought within the ambit of statutory authority are *ultra vires* the local authority, and contracts made in relation to such acts are void. In the case of a municipal corporation, the corporate body is created by Royal Charter, and consists of the mayor, aldermen and burgesses, not the borough council, but all the functions of the municipal corporation are to be performed by the borough council (*c*). *Prima facie* a municipal corporation can do anything which an ordinary individual can do, but although an act may not be *ultra vires* the charter (in a certain sense the doctrine of *ultra vires* may not apply to a municipal corporation (*d*)), the corporation may be debarred by statute from expending the general rate fund on purposes in respect of which there is no statutory authority for expenditure from the general rate fund (*e*). Contracts entered into by municipal corporations are not avoided merely by the circumstance that the subject-matter is not within the corporation's charter or statutory powers, though difficulties may arise as to the source from which payments required by the contract may be made (*f*).

A servant of a local authority cannot exercise wider powers of contracting than are possessed by the local authority, and therefore if a contract would have been void, on the grounds noted above, if made by

(*a*) S. 47 of L.G.A., 1933; 26 Statutes 328. But for a rural parish not having a separate parish council, a "representative body," which is a body corporate, is established by s. 47 (3) of L.G.A., 1933 (26 Statutes 329), who act in manner directed by the parish meeting.

(*b*) The phrase "statutory powers" includes such purposes as are reasonably incidental or ancillary to the exercise of powers specifically given by statute or under statutory authority. Cf. *A.-G. v. Smethwick Corpn.*, [1932] 1 Ch. 562; Digest (Supp.) (establishment of municipal printing works for supplying printed matter, books, etc., to corpn. departments only).

(*c*) See s. 17 of L.G.A., 1933; 26 Statutes 313.

(*d*) On this question, see under titles COMMON LAW CORPORATIONS and ULTRA VIRES.

(*e*) Vide judgment of LUXMOORE, J., in *A.-G. v. Leeds Corpn.*, [1929] 2 Ch. 291; Digest (Supp.) (running omnibuses on non-statutory routes outside the city); also *A.-G. v. Manchester Corpn.*, [1906] 1 Ch. 648; 13 Digest 362, 972 (expenditure on non-statutory parcels delivery service).

(*f*) *Newcastle-upon-Tyne Corpn. v. A.-G.*, [1892] A. C. 568; 33 Digest 85, 550 (unauthorised expenditure on adaptation of railway-bridge for foot-passengers). *A.-G. v. Manchester Corpn.*, *supra*. But as the infringement of a charter may involve the revocation of the charter under a writ of *scire facias* at the suit of the Crown, a member of the corpn. may sue for an injunction to restrain the corpn. from doing an act which constitutes an infringement of the charter, and might lead to the abolition of the corpn. (*Jenkin v. Pharmaceutical Society of Great Britain*, [1921] 1 Ch. 392; 13 Digest 359, 944).

the local authority direct, it will be void if made by a servant of the local authority (g).

By sect. 266 of L.G.A., 1933 (h), the council of a county, borough, district or parish, may enter into contracts necessary for the discharge of any of their functions. Contracts made by such a council or by a committee of the council are to be made in accordance with the standing orders of the council, but a person entering into such a contract is not bound to inquire whether the standing orders have been complied with, and failure to comply with the standing orders does not invalidate a contract which is otherwise valid (L.G.A., 1933, s. 266 (2)). A contract made by a servant does not appear to be rendered void merely because it does not comply with standing orders. [794]

In considering a contract made by a servant of a local authority which is either a statutory or common law corporation, it is necessary to determine whether the contract is one which can be made otherwise than under seal. At common law (i) a corporation can only contract under its common or corporate seal (k); but the necessity for sealing does not apply to contracts in trivial matters of frequent occurrence or in matters of urgency. Particularly is this so in the case of contracts made in the course of trading undertakings, and in practice such contracts and contracts for institutional and other supplies are made by servants of the local authority, and, subject to the application of the law of agency, such contracts are enforceable against the local authority on whose behalf the contracts are made (l). It is, however, a condition precedent to enforcement against a local authority that the existence of a contract must be proved, and that the local authority must be proved to have authorised expressly or by implication, the making of the contract by the servant. On this point, reference may be made to the decision of the Court of Appeal in *Bourne and Hollingsworth v. St. Marylebone Borough Council* (m). In this case the plaintiffs were drapers carrying on business within the district in respect of which the defendant council were statutory electric lighting undertakers, and correspondence and interviews between the plaintiffs and the electricity manager of the council appeared to constitute a contract to supply electric current to the plaintiffs' premises by a certain date. There was no contract under seal, but the council's powers in relation to electric lighting were delegated to a committee under whose control the electricity manager acted. Certain questions were left to the jury by the court of trial (n), and on the findings of the jury it was

(g) Cf. *Poulton v. London & South Western Rail. Co.* (1867), L. R. 2 Q. B. 534; 13 Digest 398, 1217. This was an action for wrongful detention of a passenger by a stationmaster in respect of a dispute as to the ticket for the carriage of a horse for the passenger whose own personal ticket was in order; it was held that as the company's statutory powers did not authorise the company to detain the passenger, no authority from the company to the stationmaster could be implied, and therefore the company was not liable for the act of the stationmaster.

(h) 26 Statutes 447.

(i) P.H.A., 1875, s. 174 (13 Statutes 698), which provided (*inter alia*) that contracts exceeding £50 in amount made by urban authorities under the P.H.A. should be in writing and under seal, is repealed by L.G.A., 1933, and is not re-enacted.

(k) On this point, see *Oxford Corp. v. Crow*, [1898] 3 Ch. 535 (13 Digest 387, 1143), where the corpn. was unable to enforce a contract for the renewal of a lease of corporate property on the ground that the contract was not under seal, nor signed on behalf of the corpn. by a person authorised under seal to do so, nor ratified under seal, nor part performed, nor acted on.

(l) These exceptions are set out fully on pp. 14—16 of Vol. IV.

(m) (1908), 72 J. P. 129 and (on appeal) *ibid.*, p. 306; 13 Digest 389, 1156.

(n) By RIDLEY, J., *ibid.*, at p. 130.

held (1) that the electric lighting committee had, under the bye-laws of the council, authority to execute and perform all the duties and powers of the council under the Electric Lighting Acts and the Electric Lighting Order of the borough, and (2) that the contract was binding on the defendants notwithstanding that it was not under seal. On an application to the Court of Appeal for judgment for the defendants, or in the alternative for a new trial, it was held that there was no evidence, which ought to have been left to the jury, of the contract which was alleged to have been entered into in June, 1905, and that a subsequent letter was not a binding contract but was merely the expression of a hopeful expectation, and, further, although there was some evidence that the electricity manager made a contract in September, 1905, there was no evidence either that he had any authority to make such a contract or that he was held out by the council as having such authority, and judgment was entered for the defendant council (o). The appeal having thus been allowed purely on the facts the effect of the decision in the court below is a little uncertain.

If a contract negotiated by a servant is subsequently embodied in a formal contract under seal, the contract under seal prevails and cannot be varied by an earlier, and different, agreement by correspondence (p); but a simple contract made by a servant can be ratified under seal and then becomes enforceable by or against the local authority (q). Where the purposes for which a corporation is created or where the duties imposed upon the corporation by statute render it necessary that work should be done or goods supplied to carry those purposes into effect, and orders are given by the corporation in relation to work to be done or goods to be supplied to carry into effect those purposes, if the work done or goods supplied are accepted by the corporation and the whole consideration for payment is executed, there is a contract to pay implied from the acts of the corporation, and the absence of a contract under seal of the corporation is no answer to an action brought in respect of the works done or the goods supplied (r). Subject to the points indicated in *Bourne and Hollingsworth v. St. Marylebone Borough Council* (*ante*), a simple contract on a matter falling within the powers of the local authority, and made by their servant, can be enforced against the authority on the ground of execution of consideration by the plaintiff. [795]

In connection with simple contracts relating to land made by a servant of a local authority, the equitable doctrine of part performance is material. Provided the contract is within the powers of the authority,

(o) *Per Gorell Barnes, P., Fletcher Moulton and Farwell, L.JJ., ibid.*, at p. 306.

(p) *Higgins (W.) Ltd. v. Northampton Corpns.*, [1927] 1 Ch. 128; 35 Digest 101, 87 (housing contract under seal not agreeing with terms of correspondence).

(q) *Brooks, Jenkins & Co. v. Torquay Corpns.*, [1902] 1 K.B. 601; 13 Digest 390, 1165 (retainers of solicitors sealed after part of work had been done under resolution not under seal): it was argued for the plaintiffs that (1) the sealed retainers were given in consideration of the plaintiffs undertaking to proceed with the work, and that this constituted a new contract under seal, and (2) that the confirmation under seal of the original retainers was binding upon the council without any new consideration. *Per Walton, J.*: "I think that the confirmation by the council under their seal of the original retainers created an obligation binding upon the council without any new consideration."

(r) *Lawford v. Billericay R.D.C.*, [1903] 1 K.B. 772; 13 Digest 394, 1193 (consulting engineer engaged to prepare report on sewage scheme). The statement in the text of the effect of this decision is taken from the judgment of *Bailhache, J.*, in *Nixon v. Erith U.D.C.*, [1924] 1 K.B. 87, at p. 90.

and the making of the contract by the servant was expressly or impliedly authorised, the other party to the contract may obtain an order for specific performance, if by his acts of part performance he has been placed in such position that refusal by the authority to complete the contract would amount to fraud in equity (s). [796]

**Responsibility in Tort.**—In considering the responsibility of local authorities for torts committed by servants, it is necessary to deal with the preliminary question of the responsibility of corporate and statutory bodies for torts. It was thought at one time that such bodies could claim immunity from liability for tort, much as similar immunity is enjoyed by the Crown; it is now well-established that a corporate or statutory body is liable in an action for tort, and that damages may be adjudged to be paid from the funds of such a body (t). This liability is subject to the application of the doctrine of *ultra vires* (u), but it is clear that liability may arise in respect of a tortious act committed by a servant in the course of executing the statutory or charter powers and duties of the corporate or statutory body, and this is so even though malice is an essential ingredient of the tortious act (a). It may be postulated, therefore, that a local authority is capable of committing a tortious act, and may be made liable in damages therefor. As to the provision of funds out of which such damages must be paid, reference may be made to the decision in *Galsworthy v. Selby Dam Drainage Commissioners* (b), in which case a statutory body of commissioners exercised powers of rating for purposes enumerated in their drainage Act, and these purposes did not include the payment of damages arising from negligence; but it was held that the commissioners' rating powers included the raising of money wherewith to pay damages arising from the negligence of their servants in carrying out the statutory works.

The application of the doctrine of *ultra vires* to the commission of torts by local authorities is not free from difficulty; *prima facie*, any tortious act committed by a local authority is an act falling outside the local authority's statutory or charter powers, but in *Campbell v. Paddington Corpn.* (c) the question of *ultra vires* arose in the following circumstances. In anticipation of a Royal funeral the borough council resolved to erect (and, by their servants and contractors, did erect) a stand on the public highway from which the members of the borough council could view the funeral procession; the erection of the stand obstructed the view of the procession from the plaintiff's house, and, in consequence, she lost fees which would otherwise have been earned by letting windows to persons desirous of viewing the procession. On an appeal against a decision of the county court in favour of the plaintiff, it was held that the plaintiff was entitled to damages, and in the course of his judgment AVORY, J., dealt with the argument that the council were not liable because they had no legal right to erect the stand, and that therefore

(s) See cases mentioned on p. 16 of Vol. IV.

(t) *Mersey Docks and Harbour Board Trustees v. Gibbs* (1866), L. R. 1 H. L. 93; 34 Digest 157, 1231.

(u) Vide *Poulton v. London & South Western Rail. Co.* (1867), L. R. 2 Q. B. 534; 13 Digest 398, 1217.

(a) *Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317; 13 Digest 405, 1268; *Citizens' Life Assurance Co. v. Brown*, [1904] A. C. 423; 32 Digest 82, 1130.

(b) [1892] 1 Q. B. 348; 13 Digest 361, 963.

(c) [1911] 1 K. B. 869; 26 Digest 429, 1483.

the local authority could not be sued, by pointing out that this contention was equivalent to saying that a corporation could never be sued in respect of a tort or any wrong done, which clearly was not true. LUSH, J., distinguished the case from that of *Poulton v. London & South Western Rail. Co.* (d), and pointed out that the principle in Poulton's case is that where a servant of a company (e) does an illegal act which he has no authority to do in the ordinary course of his employment, an authority to do the act cannot be implied if the act is one which the company itself has no power to do ; this principle does not apply to a case where the corporation has resolved to do and has, in the only way in which it can do any act, done the act which is unlawful, and which caused the damage complained of (f). The doctrine of *ultra vires* is to be applied reasonably, and whatever may be fairly regarded as incidental to or consequential upon those things which the legislature has authorised, ought not (unless expressly prohibited) to be held by judicial construction to be *ultra vires* (g). [797]

An unincorporated authority such as a committee which is purely the creation of statute, appears to be in a similar position to an incorporated local authority, so far as relates to tortious acts committed by the authority or their servants. Where the statute creating the authority provides means whereby they may sue and be sued (h), the statutory method should be followed ; where no such provision exists, representative members of the local authority should be joined as parties to the action (i). [798]

The general principle of liability of local authorities for tortious acts, and the application thereto of the maxim *respondeat superior*, must now be further considered in the light of decisions as to the tortious nature of particular acts. Clearly if the act complained of is not one which, if performed directly by the local authority, would give rise to a right of action, the local authority cannot be made liable for the same act committed by a servant ; in the nature of things a corporation acts by individual persons to whom powers and duties are delegated, but the distinction between acts of the corporation and acts of the servant is not entirely academic (k).

The first class of case in which liability has been established is that in which failure to perform a definite statutory duty has led to injury to an individual. An example of this class of case is *Ching v. Surrey County Council* (l) ; in this case the defendant council were sued by a boy who was a pupil at a public elementary school provided by them, and they were under a statutory obligation to keep in repair the school premises. The plaintiff fell and was injured owing to the existence of a hole in the school playground ; the defendants pleaded that any

(d) (1867), L. R. 2 Q. B. 534 ; 13 Digest 398, 1217.

(e) *I.e.* a corporate body.

(f) But see *infra* as to ratification of tortious acts committed by servants.

(g) See, for example, *A.-G. v. Leeds Corpn.*, [1929] 2 Ch. 291 ; Digest (Supp.). As to the doctrine of *ultra vires* in relation to local authorities, see under titles COMMON LAW CORPORATIONS and ULTRA VIRES.

(h) *E.g.* an assessment committee may sue and be sued in the name of their clerk (R. & V.A., 1925, Sched. I., para. 9 ; 14 Statutes 691).

(i) Cf. *Crisp v. Thomas* (1890), 63 L. T. 756 ; 19 Digest 563, 50 ; *Abbott v. Isham* (1920), 90 L. J. (K. B.) 309 ; 19 Digest 563, 52 (actions against school managers).

(k) Vide *Campbell v. Paddington Corpn.*, [1911] 1 K. B. 869 ; 26 Digest 429, 1483, and *Poulton v. London & South Western Rail. Co.* (1867), L. R. 2 Q. B. 534 ; 13 Digest 398, 1217.

(l) [1910] 1 K. B. 786 ; 74 J. P. 187 ; 19 Digest 556, 17.

liability to repair was an administrative duty imposed on them by the Education Acts, that they had provided proper managers and officers to carry out that administrative duty, and that if there was any negligence, it was the negligence of the managers or officers. It was held that the council were by law made responsible as principals for the discharge of their duty, and were liable in damages (m). [799]

A second class of case is that in which a local authority act negligently in the exercise of statutory powers. In *Morrison v. Sheffield Corporation* (n), the defendant council in exercise of their powers under sect. 43 of the P.H.A. Amendment Act, 1890 (o), planted trees on a highway and erected tree-guards. The exercise of this power is, by sect. 43, conditional on no hindrance of the reasonable use of the highway by the public being created, but as the result of a Lighting Order made by the chief constable of Sheffield under the Defence of the Realm Acts, the streets were abnormally dark, and in consequence the plaintiff came into contact with a tree-guard and was injured. It was held that the council having planted trees and erected tree-guards were bound to take reasonable care to protect the public, even in abnormal and unforeseen circumstances beyond the council's control. In the course of his judgment, Lord READING, L.C.J., said : "There is no duty upon them (the defendants) to keep them (the trees) absolutely safe ; but there is a duty upon them to use the statutory authorisation which has been given them with reasonable care ; and they are not entitled to allow these guards to continue in such a way as to make them dangerous to the public who are using the highway." [800]

The mere failure of a council to exercise a permissive power does not of itself render them liable to a person injured in consequence of failure to exercise the power ; thus, where a borough council failed to exercise their power of lighting a street under sect. 161 of P.H.A., 1875 (p), the council were held not liable in an action by a person who in consequence fell over a retaining wall of a road and was injured (q). The position was explained by SCRUTTON, L.J., as follows : ". . . in any view the principle comes back to this : that under sect. 161 of P.H.A., 1875, where the local authority is under no obligation to light—it is in its discretion—it is under no obligation to continue lighting either in whole or in part. It is discretionary, but if it does light, it will be liable for damages for negligence in lighting, negligence in the escape of electric current or gas, negligence in putting posts in the highway without sufficient warnings ; it will be liable if it makes traps and dangers in the street, and does not light ; but it is not liable merely for exercising its discretion not to light or exercising its discretion to discontinue lighting ; nor for dangers which it itself did not create" (r).

This question of freedom from liability as a result of the non-

(m) FLETCHER MOULTON, L.J., appears to have based his judgment in favour of the plaintiff partly on the ground that the plaintiff was not a volunteer but was directed by the local education authority to attend the school. The same line of thought may be traced in the judgment of PHILLMORE, J., in *Morris v. Carnarvon County Council* (1910), 74 J. P. 201 ; 19 Digest 556, 18, and in the judgment of FLETCHER MOULTON, L.J. (on appeal), *ibid.*, at p. 204.

(n) [1917] 2 K. B. 866 ; 38 Digest 16, 89.

(o) 18 Statutes 840.

(p) *Ibid.*, 692.

(q) *Sheppard v. Glossop Corp.*, [1921] 3 K. B. 132 ; 38 Digest 34, 207.

(r) *Semblé*, this means dangers not created by the local authority as such, but not those created by servants of the local authority in such circumstances as to render the local authority liable therefor.

exercise of discretionary powers must be distinguished from the freedom from responsibility enjoyed by highway authorities in cases of non-feasance. (See title MISFEASANCE AND NON-FEASANCE.) [801]

It is necessary now to consider what classes of persons appointed to offices by local authorities can be eliminated from the category of servants for whose actions the local authority are responsible, and, if not, whether the act or omission alleged to be tortious is one in respect of which the servant is under the control of the local authority as regards the exercise of his powers or the performance of his duties. Certain officers who, although officers of the Crown, are appointed and paid by local authorities exercise statutory functions over which the local authority have no control, and it appears that an authority would be under no liability in respect of a tort committed by such an officer. Examples of officers falling within this category are coroners, and clerks of the peace of boroughs. Again, police officers, although paid by a local authority as police authority, do not carry out their police duties as servants or agents of the local authority, but as public servants and officers of the Crown; and the authority are therefore not liable to an action for false imprisonment by a person wrongfully arrested and detained by a police officer (s). [802]

In the case of *Stanbury v. Exeter Corporation* (t), the position of inspectors appointed by local authorities for the purposes of the Diseases of Animals Acts was considered. The defendant city council appointed an inspector under sect. 35 of the Diseases of Animals Act, 1894 (u), which requires local authorities to make such appointments; the inspector seized and detained certain of the plaintiff's sheep, which were exhibited in a market in the city, suspecting that one of the sheep was suffering from sheep-scab; the inspector was acting in execution of the Sheep Scab Order of 1898, made by the then Board of Agriculture, and this order imposed on the inspector (and not on the local authority itself) certain duties in connection with sheep-scab. It was held that the city council were not liable for the negligence of the inspector in carrying out duties imposed upon him by the Board of Agriculture, and which were not duties imposed on the council and delegated by them to the inspector. It should be observed that in this case the council could have no control over the performance by the inspector of this particular duty, but, *semble*, if the inspector had been negligent in the performance of a duty imposed upon the council, and delegated to him, the council would have been liable.

An instance of the statutory imposition of duties upon an officer of a local authority occurs in sect. 51 (2) of the Housing Act, 1930 (x), which provides that the M.O.H. shall make an official representation to the local authority whenever he is of opinion that any dwelling-house in their district is unfit for human habitation or that any area in their district should be dealt with either as a clearance area or as an improvement area. By the same sub-section the medical officer may be compelled to inspect and report by reason of a complaint made by a J.P., local government electors, or a parish council. Clearly the medical officer is not controlled by, nor is he acting under the directions of, the local authority in carrying out his statutory duty, and it would appear that no liability would attach to the local authority in respect

(s) *Fisher v. Oldham Corp.*, [1930] 2 K. B. 364; 94 J. P. 132; Digest (Supp.).

(t) [1905] 2 K. B. 838; 70 J. P. 11; 34 Digest 39, 156.

(u) 1 Statutes 408.

(x) 23 Statutes 431.

of any tortious or negligent act of the medical officer in performing that duty. For other instances of officers carrying out independent statutory duties reference should be made to the titles dealing with the specific functions of local authorities and of their officers. [803]

A question as to the improper performance of a delegated power of a local authority arose in *Ormerod v. Rochdale Corporation* (*a*), in which case a sanitary inspector acting under the direction of the M.O.H., seized a quantity of meat, alleged to be unsound, belonging to the plaintiff; the meat was destroyed on the authority of the medical officer without a justice's order, whereas neither under the local Acts in force in Rochdale nor under the P.H.A., 1875, had any of the officers of the council power to destroy meat without such an order. The defendant council pleaded that by virtue of the appointment of the medical officer they were not liable for his acts; and that in their regulations governing the appointment of the medical officer they had delegated to him duties in relation to unsound meat, but he had not complied with the directions embodied in their regulations. It was held that the medical officer and the sanitary inspector had neglected to take the proper steps, but the irregularity was in the mode of doing an act which they were authorised to do, and the defendants were liable.

The foregoing case may be contrasted with that of *Garlick v. Knottingley U.D.C.* (*b*), which was an action brought to enforce the award of an arbitrator appointed under sect. 308 of P.H.A., 1875 (*c*), in respect of compensation for articles destroyed by order of the M.O.H. on the ground that they had been exposed to infection from small-pox. By sects. 120, 121 of P.H.A., 1875 (*d*), a local authority may order the cleansing and disinfection, or, alternatively, the destruction of articles exposed to infection, but in *Garlick's Case* no authority had been given by the council to the medical officer, and there was no evidence of ratification of his act by them, and it was held that the council were not liable to pay compensation (*e*). [804]

If, however, the act out of which a claim for compensation under sect. 308 of P.H.A., 1875 (*f*), arises is an act within the scope of the duties imposed on or delegated to, the officer by the local authority, it seems clear that a defect in form will not avail the local authority. In connection with claims under sect. 308 (*g*), it should be observed that the claim is not based on tort, but is the exercise of a statutory remedy available to a person who sustains damage by reason of the exercise of any of the powers of the P.H.A. in relation to any matter as to which the claimant is not in default. Under sect. 308 no question of negligence should arise (*h*), and in determining whether the council are liable for the act of an officer, the essential point to be determined is whether the officer was in fact expressly or impliedly authorised by the local authority in relation to the power the exercise whereof gave rise to the claim to compensation (*i*). [805]

(*a*) (1898), 62 J. P. 153; 25 Digest 113, 362.

(*b*) (1904), 68 J. P. 494; 38 Digest 201, 371.

(*c*) 18 Statutes 755.

(*d*) *Ibid.*, 674, 675.

(*e*) See also *Foster v. East Westmorland R.D.C.* (1903), 68 J. P. 103; a county court decision.

(*f*) See title DAMAGE, COMPENSATION FOR, at pp. 278—285 of Vol. IV.

(*g*) See p. 279 of Vol. IV.

(*h*) The question of personal liability of an officer who acts beyond his authority may arise, but is outside the scope of this title.

A somewhat special type of case is that in which damages are claimed in respect of the negligence of servants of a local authority charged with powers and duties in respect of medical treatment. The principle governing this type of case appears to be that the obligation undertaken by a local authority carrying on the business of a hospital is only that they will carry it on with all reasonable skill and care, and that a patient, whilst in the hospital, shall receive competent medical advice and assistance. In *Evans v. Liverpool Corporation* (*i*), the city council carried on a hospital for the treatment of infectious disease; the plaintiff's infant son was there treated for scarlet fever, and was discharged in an infectious condition, the discharge being effected on the instructions of the visiting physician appointed by the council. By their rules the visiting physician was responsible for the freedom from infection of the patients when discharged, and the jury found that there was a want of reasonable skill or care in the discharge of the boy. It was held that, the visiting physician being a competent and fully-qualified medical man, the defendants had done all they could do—and indeed all that the plaintiff himself would have done, if he had been able in his own house to do all that was prudent and advisable—and that the council were not responsible for a negligent mistake of the visiting physician (*k*). [806]

The principle embodied in *Evans' Case* does not appear to have been extended beyond the sphere of local authorities' operations with which it deals, namely, the provision of hospital treatment, and a question may arise as to whether any higher degree of care is imposed on local authorities who, by sect. 16 of L.G.A., 1929 (*l*), are required to recover, so far as is reasonably practicable, the cost of maintenance of patients in hospitals, maternity homes, and similar institutions (other than hospitals for the treatment of infectious disease). Cost of maintenance is worked out on an average daily basis and includes the cost of treatment, and whilst it appears that the principle in *Evans v. Liverpool Corporation* applies in such cases, it must not be forgotten that in *Hillyer's Case* already mentioned the plaintiff was a non-paying patient and that that circumstance appears to have had some bearing on the decision in the Court of Appeal. However, the underlying principle that a local authority, having provided a competent medical practitioner to attend the patient, has done all that lies in its power and cannot control or direct the treatment given by the medical practitioner to the patient, applies with equal force to both paying and non-paying patients; where, however, the plaintiff proves negligence on the part of a servant of the local authority, other than a medical practitioner, in relation to hospital treatment, the local authority may be liable in damages (*ll*). [807]

(*i*) [1906] 1 K. B. 160; 69 J. P. 263; 36 Digest 107, 719.

(*k*) As to the responsibility of authorities providing hospital treatment, see also *Hillyer v. St. Bartholomew's Hospital (Governors)*, [1909] 2 K. B. 820; 73 J. P. 501; (36 Digest 107, 720), where an action against the corpn., as Governors of St. Bartholomew's Hospital, failed, it being held that a hospital authority is not liable in damages to a non-paying patient provided that it has used reasonable care in selecting a competent staff and has furnished the staff with proper apparatus and appliances. See also *Glavin v. Rhode Island Hospital* (1879), 34 Amer. Rep. 675, and *Vancouver General Hospital v. McDaniel and Another* (1934), 152 L.T. 57; Digest (Supp.); (cross-infection in hospital for infectious diseases).

(*l*) 10 Statutes 893.

(*ll*) *Marshall v. Lindsey County Council*, [1935] 1 K. B. 516; Digest (Supp.); (paying patient admitted to county council maternity home by matron when risk of contracting puerperal fever existed). It is understood that this case may be taken on appeal to the House of Lords.

It seems to be clear that the basis of the decisions relating to medical treatment of patients in hospitals is the inability of a local authority to direct or control the treatment given by a medical practitioner, and on this point the decisions in *Evans v. Liverpool Corporation* and *Hillyer v. St. Bartholomew's Hospital* may be compared with the decision in the case of *Smith v. Martin and Kingston-upon-Hull Corporation* (*m*), where an action against a local education authority was brought on behalf of a child who, when attending an elementary school provided by the authority, was directed by a teacher to go to another room and there pull out a damper and poke the fire. In so doing the child was injured, and, on a finding that the teacher had been negligent, the council contended, relying on the cases of *Evans* and *Hillyer* (*ante*), that having appointed a competent teacher they had discharged their duty as local education authority, and had no right to interfere in the manner in which the teacher carried out her duties, and further that the order given to the child was not given in the course of the teacher's duty as such, but was an order given solely for her own benefit. In the course of his judgment VAUGHAN WILLIAMS, L.J., distinguished the employment of a teacher from that of a physician, holding that the ordinary consequences as regards liability for the acts of a servant applied to the case. On the question whether the order was within the scope of the teacher's duties he said that whilst it was true that the order related to a matter personal to the teacher, she might well have thought it better that she should depute a scholar to perform the act, rather than leave her class unattended.

Liability may also attach to a local education authority as a consequence of acts of servants (other than teachers) which can only in a very general sense be regarded as coming within the scope of the powers and duties delegated to the servant. In *Shrimpton v. Hertfordshire County Council* (*n*), the plaintiff, who was a child attending a school maintained by the defendants, and resided within about 1 mile of the school, was permitted by the school attendance officer to travel in a conveyance provided for the benefit of children residing in a hamlet some  $2\frac{1}{2}$  miles from the school. Owing to the negligence of the driver, coupled with the failure of the defendants to provide a conductor for the vehicle, the plaintiff was injured. In the Court of Appeal (*o*) it had been held that the plaintiff was not a child coming within the resolution of the county council authorising the conveyance of children, that there was no obligation on the defendants to carry the plaintiff, and that she was a mere volunteer who had not been proved to have been carried with the knowledge or consent of the defendants. In his judgment FLETCHER MOULTON, L.J., pointed out that neither was authority to permit the plaintiff to travel in the conveyance implied by the appointment of the attendance officer, nor was there any evidence that the defendant council had held out the attendance officer as a person clothed with such authority. Nevertheless, it was held on appeal to the House of Lords that, with or without the authority of the county council, the attendance officer, who was entrusted with the arrangements for the conveyance of children living upwards of 2 miles from the school, did in fact give leave for the plaintiff to ride in the conveyance, and that the jury having found that there was negligence in failing to provide a conductor, the plaintiff succeeded.

(*m*) [1911] 2 K. B. 775; 75 J. P. 433; 34 Digest 40, 163.

(*n*) (1911), 75 J. P. 201; 19 Digest 556, 19.

(*o*) (1910), 74 J. P. 305.

It would appear, therefore, that where a local education authority place a person in a position of control or responsibility with regard to school-children, the scope of that person's authority must not be narrowly interpreted, and that an act done by that person outside the actual terms of his authority may, if not clearly unreasonable and unrelated to his duties, render the local authority liable. But a local education authority are not insurers in the sense that they are responsible for injuries not resulting from negligence (*p*). Cases of the type discussed above are based on tort and are not claims for statutory compensation analogous to claims under P.H.A., 1875, and other statutes giving rights of compensation without reference to the question of negligence. **[808]**

An apparent exception to the general law as to the relationship of master and servant occurs where county and county borough councils are exercising their functions under the Poor Law Act, 1930. By sect. 10 of that statute (*q*), the M. of H. may, by order, direct a public assistance authority to appoint such paid officers, with such qualifications as he thinks necessary, for superintending or assisting in the administration of the relief of the poor, and for otherwise carrying the provisions of the Act of 1930 into execution. The Minister may define the duties of such officers and the limits within which such officers are to act in the performance of their duties, and may control appointments and dismissals, and the amount and mode of payment of salaries; the salaries are, however, paid by the authority. By sect. 13 of the Act (*r*), the Minister may on his own initiative remove or suspend a public assistance officer. These provisions substantially reproduce earlier enactments (now repealed) which were considered in the case of *Tozeland v. West Ham Guardians* (*s*). The plaintiff, who was an inmate of a workhouse maintained by the defendants, was set to work (*t*) by the engineer employed by the defendants, and was injured owing to the defective condition of a scaffolding for which the engineer was responsible. It was held that in setting the man to work in a manner suited to his capacity, the guardians were discharging a ministerial duty imposed upon them by the Poor Law Acts, and that an action in respect of personal injuries resulting from the negligence of the guardians' servant would not lie, as the duties of a poor law authority are not enforceable at the suit of a pauper, who alleges negligence on their part in carrying out their statutory ministerial duties. But, *semble*, if a contract of service could be proved, as where a local authority goes beyond its statutory duty of setting to work, and pays an inmate of a workhouse a small sum for performing certain specified duties, the person so employed would be in the same position as any other servant, and a claim by him in circumstances similar to those in *Tozeland's Case, supra*, might succeed, subject to the possible application of the doctrine of

(*p*) See *Chilvers v. L.C.C.* (1916), 80 J. P. 246; 19 Digest 557, 23 (child injured when playing with toy soldier brought to school with leave of teacher), and *Jones v. L.C.C.* (1932), 96 J. P. 371; Digest (Supp.) (boy injured when performing physical training at an Instructional centre for unemployed provided by local education authority).

(*q*) 12 Statutes 974.

(*r*) *Ibid.*, 976.

(*s*) [1907] 1 K. B. 920; 71 J. P. 194; 34 Digest 220, 1823.

(*t*) For duty to set to work, see now Poor Law Act, 1930, s. 15 (1); 12 Statutes 978.

common employment which was excluded in *Tozeland's Case* (a). And probably the relationship of master and servant would arise where a person, not in receipt of other relief, is employed by the council under sect. 70 of the Act (b) in the cultivation of land, as in such case the council are exercising a permissive function, and not a ministerial duty, and the person so employed has the like remedies for the recovery of wages as have other agricultural labourers. On the other hand, in a claim based on the negligence or other tortious act of a public assistance officer, apparently it must be considered whether the act giving rise to the claim was committed by the officer as a servant of the local authority, or whether by reason of the statutory control exercised by the M. of H., the relationship of master and servant did not subsist between the local authority and the officer.

Where an officer of a public assistance authority does an act in an illegal manner, but with the intention of conferring benefit on the local authority, and therefore is not acting ministerially, the local authority may become responsible for that act by ratification, in the same manner as, under the general law, liability may arise from ratification of the wrongful act of a servant. Thus, in the case of *Barns v. St. Mary, Islington Guardians* (c), a relieving officer, appointed by the guardians, wrongfully sold property belonging to a mental patient, and after payment of certain expenses handed over the balance to the treasurer of the guardians; the transaction appeared in the books of the relieving officer which were approved by a relief committee. The plaintiff succeeded on the ground that the guardians had adopted the act of the relieving officer; just as the relieving officer had gone outside his ministerial duties intending to act on the guardians' behalf, so the guardians in ratifying his act, knowing it to be outside his ministerial duties, had themselves acted otherwise than ministerially. [809]

**Criminal Responsibility.**—The circumstances in which an incorporated local authority may be liable to criminal prosecution in consequence of acts committed by employees of the local authority do not differ materially from those applying to corporations generally. With regard to unincorporated local authorities, *semble*, criminal responsibility might attach to individual members, who had expressly or impliedly authorised a criminal act, and in that event it would appear that such members would not have the benefit of any freedom from criminal liability which attaches to a corporation by reason of its artificial character; the scope of the powers and duties of unincorporated local authorities is, however, so limited and of such a special nature, that the question of criminal responsibility is not likely to be of practical importance.

The liability of a local authority, constituted as a body corporate, to conviction for a criminal offence is dealt with in the title CRIMINAL LIABILITY OF LOCAL AUTHORITIES, at pp. 262—266 of Vol. IV. [810]

(a) Cf. *Porton v. Central (Unemployed) Body for London*, [1909] 1 K. B. 173; 73 J. P. 43; 34 Digest 262, 2229. This was a claim under the Workmen's Compensation Act, 1906, against the statutory body established under the Unemployed Workmen Act, 1905 (5 Edw. 7, c. 18), and empowered to provide temporary work for unemployed persons. It was held that although neither the Central Body nor the workman were free agents in the matter of entering into the relationship of employer and employed, there was employment at wages and the relationship of employer and workman existed.

(b) 12 Statutes 1002.

(c) (1911) 76 J. P. 11; 1 Digest 417, 1121.

## EMPLOYMENT AGENCIES

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**Introductory.**—Employment agencies are not controlled by any public general statute which is in force throughout the country. But any local authority under the P.H. Acts, 1875 to 1932 (*a*), whether a borough council, or a U.D.C. or R.D.C., may apply to the Home Secretary for an order extending to the borough or district (or to some contributory place within a rural district) the provisions of sect. 85 of the P.H.A. (Amendment) Act, 1907 (*b*), and thus acquire a measure of control over the conduct of agencies carried on for private gain in connection with the employment of female domestic servants.

In a report made in 1923 to the Minister of Labour by a Committee set up to inquire into conditions as to the supply of female domestic servants, it was stated that only 54 of the 1,767 borough and district councils had made bye-laws, under the Act of 1907, applying to servants' registry offices. The committee strongly urged that the exercise of these powers should be generally undertaken, and that in the event of the continued failure of local authorities to exercise the powers, legislation should be promoted to compel them to do so. Further, that all bye-laws under sect. 85 should include provisions regulating the payment of booking fees and the publication of advertisements relating to vacant situations or to applicants for employment. [811]

**Registration.**—Where sect. 85 of the Act of 1907 is in force, the keeper of a registry office for the employment of female domestic servants must register his name and abode and the office with the council, but they have no power to refuse or to revoke registration. The council must give public notice of the provisions of the section by advertisement in two newspapers circulating in the borough or district, and by handbills and otherwise as they may think sufficient. Presumably this notice need only be given when the order putting in force sect. 85 is received. The council may make bye-laws, prescribing the books to be kept and the entries to be made therein by registered keepers of servants' registry offices, and any other provisions deemed necessary for the prevention of fraud or immorality and for regulating the conduct of the registry office. The person registered must exhibit a copy of

the bye-laws conspicuously in his premises. Authorised officers of the council have powers of entry and inspection of registered premises. A keeper who fails to register or contravenes any of the provisions of sect. 85 or of bye-laws made thereunder is liable on summary conviction to a fine not exceeding £5 and to a further penalty not exceeding £2 for each day on which the offence is continued after conviction. The court may (in lieu of or in addition to a penalty) suspend or cancel the registration. [812]

**Licensing under Local Acts.**—The county councils of London, Middlesex, Surrey and Essex, and certain borough councils, have obtained, by local Act (*c.*), fuller powers than those which may be acquired under sect. 85 of the Act of 1907. These local Acts usually prohibit the carrying on of any employment agency without a licence from the county council, exceptions being made in favour of (1) the labour exchanges conducted by the Ministry of Labour; (2) the juvenile employment bureaux of local education authorities; (3) agencies exclusively carried on for the employment of ex-members of the fighting forces of the Crown and of persons released from prisons, reformatories and industrial schools, if such agencies are officially certified to be properly conducted; and (4) religious and charitable organisations operating throughout Great Britain if the provision of employment is subsidiary to their main objects. Annual fees are payable by licensees.

The councils who have obtained licensing powers are usually empowered to refuse or revoke licences under prescribed conditions and for specified reasons. They also have powers to make bye-laws and to institute proceedings for offences.

The employment agencies dealt with by these local Acts usually include all employment agencies, except those exempted, whether carried on for private gain or not. The scope of the private Acts is not limited to agencies for the employment of female domestic servants, as is the case in areas in which sect. 85 of the Act of 1907 is in force. In some instances, agencies for teaching and training are specially regulated. [813]

**Bye-laws.**—Bye-laws of local authorities made under sect. 85 of the Act of 1907 must be confirmed by the Home Secretary (*d*). They deal with such matters as the fees charged by keepers of registry offices, advertisements and notices of situations vacant or wanted, methods of book-keeping and record-keeping by such keepers, sleeping accommodation provided for females, the employment of persons abroad and the employment in this country of persons from abroad. The bye-laws usually contain also provisions in the interests of decency and morality, and special provisions applicable to theatrical, concert, variety and cinematograph agencies. In some instances, certain bye-laws are relaxed with respect to keepers who receive no preliminary

(c) See the L.C.C. (General Powers) Act, 1921, Part III. (11 Statutes 1347); Surrey County Council Act, 1925 (15 & 16 Geo. 5, c. cxv.), Part V.; Middlesex County Council Act, 1930 (20 & 21 Geo. 5, c. clxvi.), Part V.; Essex County Council Act, 1933 (23 & 24 Geo. 5, c. xlvi.), Part V.; Guildford Corp. Act, 1926 (16 & 17 Geo. 5, c. lxxxv.), Part IX.; Sheffield Corp. Act, 1928 (18 & 19 Geo. 5, c. lxxxvii.), Part XVI.; Bootle Corp. Act, 1930 (20 & 21 Geo. 5, c. clxxxvi.), Part II.; Cardiff Corp. Act, 1930 (20 & 21 Geo. 5, c. clxxiv.), Part XI.; Leeds Corp. Act, 1930 (20 & 21 Geo. 5, c. cxix.), Part IX.; Brighton Corp. Act, 1931 (21 & 22 Geo. 5, c. cix.), Part XXIV.; Bury Corp. Act, 1932 (22 & 23 Geo. 5, c. lxix.), Part XI.

(d) See proviso to s. 9 of the Act; 13 Statutes 914.

fees from employers or applicants for employment. It is usual for the bye-laws to limit the preliminary or "booking" fees which may be demanded, and to forbid keepers to demand or accept preliminary fees from persons replying to advertisements issued by the agent. [814]

**London.**—Employment agencies within the County of London are regulated by Part III. of the L.C.C. (General Powers) Act, 1921 (*e*), as amended by L.C.C. (General Powers) Act, 1926, sect. 40 (*f*), which makes it illegal to carry on an employment agency without a licence from the licensing authority.

"Employment agency" means any agency or registry in the county carried on or represented as being or intended to be carried on (whether for the purposes of gain or reward or not) for or in connection with the employment of persons in any capacity, and any person who offers to teach or train or afford facilities for teaching or training those desirous of employment as actors, singers, dancers, musicians, or in other similar capacities at music halls, theatres or in connection with film productions, and who directly or indirectly offers or holds out a prospect of such employment as an inducement to those who desire to be so taught or trained is to be deemed to be carrying on an employment agency. The following are, however, exempt from the provisions : (a) any employment agency conducted by or under the direction and supervision of the Minister of Labour under the Labour Exchanges Act, 1909 (*g*), or any other Act ; (b) any employment agency which is carried on exclusively for the purpose of obtaining employment for (i.) ex-members of the naval or military services, and (ii.) persons released from a prison or Borstal institution, or from a reformatory or industrial school and which is certified annually by the Admiralty or the Army Council or by the Secretary of State (as the case may be) to be properly conducted ; (c) any employment agency conducted by a metropolitan borough council under the Labour Bureaux (London) Act, 1902 (*h*), by a central body or distress committee under the Unemployed Workmen Act, 1905 (*i*), or by the Port of London Authority under the Port of London (Consolidation) Act, 1920 (*k*).

The licensing authority is, as respects the county (exclusive of the City of London), the L.C.C., and, as respects the City of London, the City Corporation.

Applications must be made, in writing, to the licensing authority, stating, *inter alia*, the nature of the employment agency, and whether and if so to what extent the applicant is interested in any other employment agency.

The licensing authority may refuse to grant or renew a licence, or may revoke a licence granted (1) to any person under the age of twenty-one years, (2) to any person who may be unsuitable to hold such licence, (3) in respect of any premises which are unsuitable for the purposes of an employment agency, or (4) in respect of any employment agency which has been or is being improperly conducted. Before revoking or refusing to renew any licence, the licensing authority must give seven days' previous notice in writing and must, on written application made within three days after receipt of the notice, afford the applicant an opportunity of being heard. A fee of two guineas is

(*e*) 11 Statutes 1847.

(*g*) 20 Statutes 650.

(*i*) 5 Edw. 7, c. 18.

(*f*) *Ibid.*, 1883.

(*h*) *Ibid.*, 649.

(*k*) 18 Statutes 592.

prescribed in respect of the grant of a licence, and one guinea in respect of the renewal of a licence. Licences expire annually on the 31st day of December, unless previously revoked. On refusal to grant or renew a licence, or on revocation of a licence, the licensing authority must, if required by the applicant or holder, deliver to him within seven days of the receipt of such requirement particulars, in writing, of the ground or grounds of refusal or revocation. Appeal against refusal or revocation lies, within fourteen days, to a magistrate, and a further appeal may be made from the magistrate to quarter sessions.

The licensing authorities have made bye-laws under sect. 12 of the Act (*l*), requiring persons holding licences to keep either books, cards or forms, showing the business conducted, and also for the prevention of fraud or immorality. A copy of the bye-laws must be exhibited in a suitable place by every licence holder.

The Act provides for powers of entry and inspection by officers of the licensing authority and for penalties for breach of the provisions of the Act, and provides (sect. 15 (*m*)) that directors of limited liability companies are to be personally liable for penalties. [815]

(*l*) 11 Statutes 1348.

(*m*) *Ibid.*, 1350.

## EMPLOYMENT OF CHILDREN AND YOUNG PERSONS

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As to the employment of children and young persons in shops, see title SHOPS.

*See also titles :*

AGRICULTURAL GANGS ;

BEGGING ;

FRUIT AND HOP PICKERS ;

INFANTS, CHILDREN AND YOUNG PERSONS ;  
PREVENTION OF CRUELTY TO CHILDREN ;  
REFRACTORY CHILDREN.

Since the Chimney Sweepers and Chimneys Regulation Act, 1840 (*a*), was passed, there have been various statutes restricting the conditions under which children and young persons may be employed. Local

authorities are charged with the duty of enforcing the law in certain cases, of which the Shop Acts are an example.

The main purpose of this article is to deal with the powers and duties of local authorities under the Children and Young Persons Act, 1933 (*b*), with reference to the employment of children and young persons and the making of bye-laws upon the subject, and with a few provisions still left in the Education Act, 1921. These are dealt with first, as being under an earlier statute. The Act of 1933, however, is now the statute under which action will generally be taken.

In general, the Education Act, 1921, will be referred to as "the Act of 1921," and the Children and Young Persons Act, 1933, will be called "the Act of 1933."

Special statutes like the Shop Acts, 1912 to 1934, which contain sections relating to children and young persons, are dealt with under their appropriate headings elsewhere. Similarly, certain aspects of employment are dealt with in the titles AGRICULTURAL GANGS, EDUCATION, FACTORIES AND WORKSHOPS, SHOPS, and other titles. [816]

#### EDUCATION ACT, 1921

**Powers of Local Education Authorities.**—So far as children of school age are concerned, local education authorities have for many years been entrusted with powers relating to their employment, including the power to make bye-laws, and account must still be taken of certain sections of the Education Act, 1921 (*c*). They are saved by sect. 29 (2) of the Act of 1933 (*d*). [817]

**Suspension of Employment of Continuation Scholars.**—By sect. 93 of the Act of 1921 (*e*), a local education authority for higher education may require the suspension of the employment of a young person (*f*) who is under an obligation to attend a continuation school on any day when his attendance is required, not only during the hours of attendance but up to an additional two hours if it be considered necessary in order that he may be fit to receive full benefit from school attendance. The Board of Education may settle disputes between employers and local education authorities. [818]

**Prohibition of Employment on Grounds of Health or Education.**—Local elementary education authorities have power, under sect. 94 of the same Act, to prohibit, or to attach conditions to, the employment of a child, if they are satisfied by a report of the school medical officer or otherwise (*g*) that the child is being employed in such a way as to be prejudicial to his health or physical development, or so as to prevent him from obtaining proper benefit from his education. Employers and parents are bound, under a penalty not exceeding 40*s.*, to furnish the

(*b*) 26 Statutes 168 *et seq.*

(*c*) 7 Statutes 130 *et seq.*

(*d*) 26 Statutes 191.

(*e*) 7 Statutes 181. No order under s. 173 of the Act bringing this section into general operation has yet been made by the Board of Education.

(*f*) That is, a person under eighteen years of age who is no longer a child (s. 170 (14)). "Child" for this purpose means a child up to the age at which his parents cease to be under an obligation as to his elementary education (s. 170 (13)).

(*g*) *Margerison v. Hind & Co., Ltd.*, [1922] 1 K. B. 214; 85 J. P. 278; 19 Digest 571, 113, shows that the justices are bound to verify that this condition has been complied with and to examine any medical report which has been made.

authority with such information as regards the employment as the authority may require. For false information the penalty is the same. [819]

**Illegal Employment : Offences.**—Sect. 95 of the Act of 1921 (*h*), deals with the illegal employment of children and young persons under four headings, and prohibits the employment of :

- (1) a child so as to prevent his attending school according to the Act and local bye-laws ;
- (2) a child in contravention of a prohibition or restriction under sect. 94 after receiving notice of it ;
- (3) a young person so as to prevent his attendance at a continuation school in accordance with sect. 76 (*i*) ;
- (4) a young person when his employment should be suspended in connection with his attendance at a continuation school in accordance with a requirement under sect. 93.

First offences for employment in contravention of the above provisions are punishable with a fine of not more than 40s.; subsequent offences, with a fine of not more than £5 (*k*) ; and a parent conducing to the commission of such offence by wilful default or habitual neglect to exercise due care is liable to the same penalties (*l*).

If this offence be actually committed by a workman or agent of the employer, such person is to be liable as if he were the employer (*m*). If the employer be charged, he may lay an information against any other person whom he alleges to be the actual offender, and if he satisfies the court that he himself has used due diligence and that the other person committed the offence without the employer's knowledge, consent or connivance, then the employer is exempt from any fine and the other person shall be convicted (*n*). And, similarly, an inspector, or other officer may, on discovering an offence, proceed against the actual offender instead of against the employer (*o*).

A parent who uses or is privy to the use of a false or forged certificate as to age, or who makes false representations as to age, upon which a child or young person is taken into employment contrary to the foregoing provisions, is liable to a fine not exceeding 40s. (*p*).

Where a child or young person is apparently of the age alleged in any proceedings under the Act, the burden of proof that he is not of such age lies on the defendant (*q*).

Information for offences against sects. 93 and 96—98 must be laid within three months after the date of their commission (*r*). [820]

**Entry on Premises.**—If it is believed that a child or young person is being employed contrary to Part VIII. of the Education Act, 1921, an officer of the local elementary education authority may complain to a justice of the peace, who may by written order empower an officer of the authority to enter the place of employment at any reasonable time, within forty-eight hours from the date of the order, and examine the place and any person therein touching the employment of any child or young person therein (*s*). Refusal to admit, or obstruction, is punishable with a fine up to £20. [821]

(*h*) 7 Statutes 181.

(*i*) *Ibid.*, 170.

(*k*) Act of 1921, s. 96 (1); 7 Statutes 182.

(*l*) *Ibid.*, s. 96 (2).

(*m*) *Ibid.*, s. 97 (1).

(*n*) *Ibid.*, s. 97 (3).

(*o*) *Ibid.*, s. 97 (4).

(*p*) *Ibid.*, s. 97 (2).

(*q*) *Ibid.*, s. 141.

(*r*) *Ibid.*, s. 99.

(*s*) *Ibid.*, s. 98; 7 Statutes 183. Cf. s. 28 of the Act of 1933 (26 Statutes 191).

**Definitions.**—“Parent” includes a guardian and every person liable to maintain or having the actual custody of the child or young person (*t*).

“Employ” and “employment” include employment in any labour exercised by way of trade or for gain, whether the gain be to the child or young person or some one else (*u*). It is not essential that the relationship of master and servant should exist; there may be employment where the relation is that of principal and agent (*a*). On the question of employment it was held, with regard to the same words in an earlier statute, that a father committed no offence when, acting on medical advice, he allowed his epileptic son to go to his workshop and to do such work as he was minded and able to do (*b*). [822]

#### CHILDREN AND YOUNG PERSONS ACT, 1933

**General Effect of Statute.**—Part II. (sects. 18—30) (*c*) of this Act deals generally with restrictions on the employment of children (*d*), bye-laws as to employment of persons under eighteen (*e*), street trading by persons under eighteen, children taking part in entertainments and performances, dangerous performances by persons under sixteen, the training of persons under sixteen for dangerous performances, and persons under eighteen going abroad to perform for profit. [823]

**Statutory Restrictions on Employment of Children.**—No child under twelve may be employed at all, unless a bye-law authorises the employment of children by their parents or guardians in light agricultural or horticultural work (*f*).

No child can be employed before the end of school hours on a day when he is required to attend school, unless a bye-law permits the employment of children for not more than one hour before school hours begin (*f*).

No child may be employed on any day before 6 a.m. or after 8 p.m., or for more than two hours on any day when he is required to attend school, or for more than two hours on Sunday, or to lift, carry, or move anything so heavy as to be likely to injure him (*g*). Where, however, a child is taking part in an entertainment under a licence granted under Part II. of the Act, he is not prevented from being employed before 6 a.m. or after 8 p.m., or for more than two hours on a school day (*h*). It is to be noted, especially in relation to Sunday employment, that a chorister taking part in a religious service or in a practice for such

(*t*) Act of 1921, s. 170 (12); 7 Statutes 213.

(*u*) *Ibid.*, s. 170 (18). Under the Act of 1933 the definition of employment is extended for Part II. of that Act (see s. 30; 26 Statutes 192).

(*a*) *Morgan v. Parr*, [1921] 2 K. B. 379; 28 Digest 348, 2191; and *Sweet v. Williams* (1922), 87 J. P. 51; 28 Digest 348, 2192.

(*b*) *R. v. Austin, ex parte Leah* (1906), 71 J. P. 29; 19 Digest 572, 115. The justices had found as a fact that no gain resulted to the father from the child's assistance.

(*c*) 26 Statutes 181—192.

(*d*) By s. 30, a child attending a public elementary school attaining the age of fourteen during a school term is deemed to be still a child until the end of the term, except for the purpose of the provisions as to employment abroad.

(*e*) S. 19 has not yet been brought into force by an order of the Home Secretary under that section.

(*f*) Act of 1933, s. 18 (1); 26 Statutes 181.

(*g*) *Ibid.*

(*h*) *Ibid.*, s. 18 (3).

service is not, whether he receives a reward or not, to be deemed to be employed (i). [824]

**Bye-laws as to Employment of Children.**—A local authority, which, for this purpose, is the local education authority for elementary education (k), may make bye-laws imposing further restrictions but not modifying the statutory restrictions save as expressly indicated above (l). Such bye-laws may distinguish between children of different ages and sexes and between different localities, trades, occupations and circumstances. They may also prohibit absolutely the employment of children in any specified occupation (l). In the past, bye-laws under earlier Acts have sometimes prohibited occupations which are liable to be specially harmful, such as those of lather boy, billiard marker, rag sorter, or employment in connection with the sale of intoxicants, or on fair-grounds, etc. It seems clear from sect. 18 (2) that local circumstances may be taken into consideration in deciding what occupations are to be prohibited.

In a memorandum issued by the H.O. in 1933 for the guidance of local authorities (m) it was suggested that local authorities who decided to allow employment before school should limit it, as had frequently been done under the earlier bye-laws, to specific occupations such as the delivery of milk or newspapers for an hour. Precautions such as the following were also suggested :

- (a) The hour of employment before school should be fixed so as to ensure that the child has sufficient time to get his breakfast, to change his clothes if necessary, and to reach school punctually.
- (b) There should be a medical certificate of fitness.
- (c) The child should be safeguarded from getting wet (either by a provision in a bye-law as to employment before school or in a general bye-law applying to all employment out of doors).

The same memorandum deals with employment on school holidays or on Sundays. It is pointed out that children should not be employed so as to deprive them of proper rest and recreation or the opportunity for joining in the activities of scouts, guides, clubs and other organisations. The practice has been to fix a daily maximum of four or five hours on holidays. It is suggested that if the daily maximum be fixed at five hours a weekly maximum may also be desirable.

The two hours' limit of Sunday employment has in the past usually been supplemented by a bye-law limiting occupations and fixing hours so that the child may be able to attend church or Sunday school.

It is considered desirable that bye-laws should, as far as may be, fix certain hours within which children may be employed. Obviously, it is then much easier for the officers of a local authority to detect any excessive or irregular employment. But definite hours cannot always be conveniently prescribed ; and the system of employment cards and badges has in the past been used by many local authorities and found to be a satisfactory method of checking the hours of work of different children. Sometimes the employer is required to keep a

(i) Act of 1933, s. 30 ; 26 Statutes 192.

(k) *Ibid.*, s. 96 (1) ; 26 Statutes 232.

(l) *Ibid.*, s. 18 (2) ; 26 Statutes 181.

(m) Permission to quote from this memorandum has been granted by the Controller, H.M. Stationery Office.

special register showing hours of employment and other particulars.  
[825]

**Bye-laws as to Employment of Young Persons.**—Sect. 19 of the Act of 1933 (*n*), has not yet come into operation (*nn*). A resolution of both Houses of Parliament in the same session approving a draft order of the Secretary of State is necessary before the Secretary of State can by order bring it into force on a day to be appointed by him (*o*). By this section local authorities are given power to make bye-laws with respect to young persons under the age of eighteen years who are no longer children. Such bye-laws may deal with the number of hours of employment and the times of day at which they may be employed, intervals for meals and rest, holidays and half-holidays and generally with conditions of employment. They may distinguish between persons of different ages and sexes, different localities, occupations and circumstances.

The bye-laws may not, however, deal with employment in or about the delivery, collection or transport of goods except in the capacity of van boy, errand boy or messenger; in or in connection with factories, workshops, mines, quarries, shops or offices, with the same exceptions; in the building or engineering trades, with the same exceptions; in agriculture; in domestic service, save as a daily non-resident servant; or in any ship or boat registered in the United Kingdom as a British ship, or in any fishing boat entered in the fishing boat register (*p*).

[826]

**Street Trading.**—“Street trading” includes the hawking of newspapers, matches, flowers and other articles, playing, singing, or performing for profit, shoe-blacking and other like occupations carried on in streets or public places; and a person who assists in a trade or occupation carried on for profit is deemed to be employed even though he receives no reward (*q*). “Public place” is defined in sect. 107 of the Act (*r*) as including “any public park, garden, sea beach or railway station, and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise.”

The definition of street trading is not, it appears, exhaustive; it is inclusive of certain forms of trading, but not exclusive of others. Street trading implies seeking custom in the streets, and a boy who calls at shop customers’ houses for orders, with a van from which he supplies goods, is not a street trader (*s*).

Employment includes the relationship of principal and agent as well as that of master and servant (*t*).

There is now an absolute prohibition of street trading by children (*a*), and young persons under sixteen may be so employed only if bye-laws authorise it, and then by their parents only (*b*).

With regard to young persons between the ages of sixteen and

(*n*) 26 Statutes 182.

(*nn*) June, 1935.

(*o*) S. 19 (3); 26 Statutes 183.

(*p*) S. 19 (2).

(*q*) *Ibid.*, s. 30; 26 Statutes 192.

(*r*) 26 Statutes 238.

(*s*) *Stratford Co-operative Society v. East Ham Corp.,* [1915] 2 K. B. 70; 28 Digest 348, 2190.

(*t*) *Morgan v. Parr*, [1921] 2 K. B. 379; 28 Digest 348, 2191; *Sweet v. Williams* (1922), 87 J. P. 51; 28 Digest 348, 2192.

(*a*) By s. 30, a child attending a public elementary school attaining the age of fourteen during a school term is deemed to be still a child until the end of the term except for the purposes of the provisions as to employment abroad.

(*b*) Act of 1933, s. 20; 26 Statutes 183.

eighteen years the position is that the council of a county or county borough (c) may make bye-laws, not only regulating, but also prohibiting street trading by any such young person. The raising of the age from sixteen to some higher age is, of course, a drastic step; but it may be that in some localities conditions make it desirable. Generally, however, regulation rather than prohibition is likely to be undertaken by councils. The bye-laws may distinguish between persons of different ages and sexes, and may deal with the days and hours of engaging in or being employed in street trading as well as the places: they may regulate the conditions of grant; suspension and revocation of licences; and may regulate in other respects the conduct of street traders (d).

[827]

**Penalties for Illegal Employment.**—If any one is employed in contravention of Part II. of the Act of 1933 or of bye-laws made thereunder, his employer and any other person to whose act or default the contravention is attributable, other than the person employed, is liable to a fine not exceeding £5, and for a subsequent offence (e) to a fine not exceeding £20 (f). But if the employer proceeded against alleges that the offence is due to the act or default of some other person, he may lay an information against such person, other than the person employed, and, after giving not less than three days' notice to the prosecution, he may have that person brought before the court; and if the contravention be proved, and the employer also proves that it was due to the other person, then that other person may be convicted (f). If, further, the employer satisfies the court as to his own diligence, he is to be acquitted. The prosecution may cross-examine him and his witnesses and call rebutting evidence; and the court can order costs to be paid by any party to any other party (g).

A person under eighteen years of age who infringes sect. 20 or bye-laws made thereunder is liable to a fine not exceeding 20s., and for a subsequent offence 40s. [828]

**Entertainments.**—The employment of children (i) in entertainments is regulated by sect. 22 of the Act of 1933 (k), and the Employment of Children in Entertainments Rules, 1933, made by the Board of Education (l). Bye-laws with respect to employment generally may also affect employment in entertainments, save when expressly excepted under sect. 18 (3) of the Act as respects children employed under licence in an entertainment.

Sect. 22 contains a general prohibition of children taking part in entertainments in connection with which any charge is made, whether for admission or not, except under a licence granted by a local authority. To this, however, there are certain exceptions, dealt with later. A

(c) See s. 96 of the Act; 26 Statutes 232.

(d) Act of 1933, s. 20; *ibid.*, 183.

(e) This means an offence committed after a previous conviction for a previous offence. *R. v. South Shields Licensing Justices*, [1911] 2 K. B. 1; 30 Digest 82, 637.

(f) Act of 1933, s. 21 (1); 26 Statutes 183.

(g) *Ibid.*, s. 21 (2).

(h) *Ibid.*, s. 21 (3).

(i) By s. 30 a child attending a public elementary school attaining the age of fourteen during a school term is deemed to be still a child until the end of the term, except for the purposes of the provisions as to employment abroad.

(k) 26 Statutes 184.

(l) S.R. & O. 1933, No. 971.

person who causes or procures a child to take part in an entertainment in contravention of the section, or a parent or guardian who allows him to do so, is liable to a fine not exceeding £5, or, in the case of a subsequent offence, not exceeding £20 (*m*). The local authority to grant the licence will be the local authority for elementary education for the area in which the child is residing (*n*).

No child under twelve years of age can be licensed, but there are certain occasions upon which such a child may appear without a licence, as mentioned below.

The licence to a child over twelve may be to take part in any specified entertainment or a series of entertainments in or outside the area of the authority granting it (*o*).

A licence is not to be granted unless the local authority are satisfied that the child is fit to take part in the entertainment, or series of entertainments, and that proper provision has been made to secure his health and kind treatment. By the First Schedule to the Rules of the Board of Education (*p*), a certificate of the school medical officer that the child may be employed without prejudice to health, and that the employment will not render him unfit to benefit properly from his education, must be one of the documents accompanying the written application for a licence. Others are a birth certificate, or other evidence of age, photographs of the child and an educational report. No licence may be granted for an entertainment which is to take place on Sunday (*a*).

The form of licence in the Second Schedule to the Rules contains a note to the effect that the period of the licence must not exceed six months; the licence also deals with the latest hour of leaving the place of employment, holidays during the currency of the licence, periodical medical examinations by a school medical officer and various other conditions.

Rule 3 requires the holder of a licence to furnish the local authority within whose area the entertainment is to take place (which may not be the area in which the licence is granted) with particulars of the licence and the other information prescribed by the Third Schedule to the Rules, at least seven days before the child takes part in an entertainment. For a failure so to do, a fine not exceeding £5 may be imposed (*b*).

The licence may be revoked by the local authority within whose area the entertainment has taken or is about to take place, if a restriction or condition in the licence is not observed (*c*). At the written request of the holder, a licence may be varied or extended by any such local authority, subject to any restrictions and conditions prescribed by the Rules (*c*). Rule 4 prohibits a variation or extension which is inconsistent with those subject to which a licence may be granted.

There is a right of appeal by an applicant for a licence, or the holder of a licence, against the decision of a local authority to the Board of Education (*d*). The Board can thereupon exercise the powers of a local authority under the section. [829]

(*m*) Act of 1933, s. 22 (1); 26 Statutes 184. As to meaning of second and subsequent offence, see note (*e*), *ante*.

(*n*) Act of 1933, s. 96 (1); 26 Statutes 232.

(*o*) *Ibid.*, s. 22 (3); 26 Statutes 185.

(*a*) Act of 1933, s. 22 (3); 26 Statutes 185.

(*c*) *Ibid.*, s. 22 (5).

(*p*) S.R. & O., 1933, No. 971.

(*b*) *Ibid.*, s. 22 (4).

(*d*) *Ibid.*, s. 22 (6).

In certain cases no licence is necessary to enable a child to take part in an entertainment. Provided neither the Act itself nor bye-laws relating to employment be infringed, a child may do so without a licence, if he has not taken part on more than six occasions during the preceding six months in entertainments in connection with which any charge is made and, also, if the net proceeds of the entertainment are devoted to purposes other than the private profit of the promoters. Even in these cases, however, a licence is necessary if the entertainment is given on premises licensed for the sale of intoxicating liquors, unless such premises are also licensed for stage plays or for public music, singing and dancing, or unless special authority for the child to appear has been given in writing by two justices of the peace (e).

A child under twelve, it appears, may appear in an entertainment for which no licence is required, provided that such appearance does not involve employment. No child under twelve can be employed at all, save by his parents or guardians, in light agricultural or horticultural work (f), and therefore employment in entertainment work is prohibited. Appearance in an entertainment need not necessarily involve employment, however, and in such cases, provided the conditions laid down in sect. 22 (2) are satisfied, a child under twelve, who cannot be licensed, may still take part in an entertainment. [830]

Special authority is in general granted by the justices of the peace, but may be granted by a metropolitan police magistrate (ff), by the Lord Mayor or an alderman of the City of London (g) or by a stipendiary magistrate (h).

Sect. 29 (1) of the Act of 1933 (i) contains an exemption from the restrictions on employment or on taking part in entertainments (other than those relating to employment abroad) imposed by the Act or the bye-laws, in respect of a person twelve years of age or more taking part in a performance, whether or not it be an entertainment, which is broadcast by the British Broadcasting Corporation, so long as the public are not admitted on payment. As to children under twelve, see *supra*. [831]

**Dangerous Performances.**—Public performances by a person under sixteen years in which his life or limbs are endangered are prohibited, and any one who causes or procures a person under sixteen to take part in such a performance, or being the parent or guardian allows it, becomes liable to a fine of not more than £10, or in case of a subsequent offence, of not more than £50 (k).

The language of sect. 24, which deals with training, is different. Reference is there made to "performances of a dangerous nature." Such performances might not involve danger to life or limb, but might, e.g. endanger the eyes or risk a rupture.

Sect. 23 says "allows" and not "knowingly allows." The effect, no doubt, is to cast the burden of proof of absence of knowledge upon the accused parent or guardian. Generally, of course, allowing implies

(e) Act of 1933, s. 22 (2); 26 Statutes 184.

(f) *Ibid.*, s. 18 (1), (2).

(ff) Metropolitan Police Courts Act, 1839, s. 14; 11 Statutes 252; Summary Jurisdiction Act, 1848, s. 33; 11 Statutes 290.

(g) Summary Jurisdiction Act, 1848, s. 34; 11 Statutes 290.

(h) Stipendiary Magistrates Act, 1858, s. 1; 11 Statutes 304.

(i) 26 Statutes 191.

(k) Act of 1933, s. 23; 26 Statutes 185. As to meaning of second or subsequent offence, see *ante*, note (e), on p. 361.

a knowledge. In *Crabtree v. Fern Spinning Co., Ltd.* (*l*), DARLING, J., observed : "A man cannot be said to allow that of which he is unaware, or that which he cannot prevent." Parents and guardians have, however, peculiar responsibilities, and it can be argued that negligence or indifference to parental duty may be sufficient without proof of actual knowledge.

Proceedings for an offence under sect. 23 cannot be taken without the authority of a chief officer of police, namely, in the City of London the Commissioner of City Police, and in other parts of England the officer so designated by the Police Act, 1890 (*m*), that is to say, in the metropolitan police district, the Commissioner of Police of the metropolis; in a county, the chief constable; and in a borough, the chief or head constable (*n*). [832]

**Training for Dangerous Performances.**—No child under twelve years may be trained to take part in performances of a dangerous nature, and no one under the age of sixteen may be so trained except under a licence granted by a petty sessional court (*o*). The expression "performance of a dangerous nature" is by sect. 30 of the Act (*p*) to include all acrobatic performances and all performances as a contortionist; but the definition is clearly not exhaustive or exclusive.

Before applying to a petty sessional court for a licence in respect of a child or young person between the ages of twelve and sixteen, the applicant must give at least seven days' notice to the chief officer of police (as defined above) for the district in which it is proposed to train the child or young person. The chief officer may appear, or instruct some other person to appear (*q*), in court and oppose the granting of the licence. The licence cannot be granted unless the court is satisfied that the requisite notice has been given (*r*).

If the licence be granted, it must specify the place or places at which the person is to be trained, and such conditions are to be imposed as are, in the opinion of the court, necessary for his protection (*s*). The court must not, however, refuse a licence if satisfied that the person is both fit and willing to be trained and that proper provision has been made for his health and kind treatment. Upon cause being shown by any person, the licence may be revoked by a petty sessional court acting for the same division or place as the court which granted it (*t*). The holder of the licence would naturally be given notice and an opportunity of being heard.

Any person who causes or procures, or being his parent or guardian allows (*u*), a child or young person under sixteen to be trained in contravention of sect. 24 of the Act, is liable to a fine not exceeding £5, or, for a subsequent offence not exceeding £20 (*a*).

(*l*) (1901), 66 J. P. 181; 34 Digest 152, 1198.

(*m*) See ss. 23, 107 of the Act of 1933; 26 Statutes 185, 238.

(*n*) Police Act, 1890, s. 33; 12 Statutes 852.

(*o*) Act of 1933, s. 24; 26 Statutes 186.

(*p*) 26 Statutes 192.

(*q*) Evidently this must mean some one other than counsel or solicitor; probably a police officer.

(*r*) Under s. 24 (3) a notice may be "given." The word "served" is not used, so it may be that written notice is not essential, though it is desirable. See *Thompson v. Ayling* (1849), 19 L. J. Ex. 55; 12 Digest 430, 3484.

(*s*) Act of 1933, s. 24 (4); 26 Statutes 186.

(*t*) *Ibid.*, s. 24 (5).

(*u*) As to meaning of "allows," see *ante*, p. 363.

(*a*) Act of 1933, s. 24 (1); 26 Statutes 186.

It is to be noted that by sect. 23, *ante*, performances by persons under sixteen in which life or limbs are actually endangered are absolutely prohibited. As already pointed out, the wording of sect. 24 differs from that of sect. 23. [833]

**Employment Abroad.**—Sect. 25 of the Act (b) imposes restrictions upon persons under eighteen years of age who wish to go abroad to sing, play, perform, or to be exhibited for profit. A person under fourteen years of age is subject to an absolute prohibition. From fourteen years to eighteen years he may go abroad for these purposes if a licence is granted by the chief magistrate of the metropolitan police courts, a police magistrate at Bow Street Police Court, London, or by any stipendiary magistrate appointed to exercise jurisdiction in the matter by an Order in Council (c). At present the work of licensing is all done at the Bow Street Police Court.

The form of a licence, and of any renewal, variation or revocation of a licence, has been prescribed by an order of the Home Secretary (d).

Officers of local authorities may occasionally wish to act under sect. 26 (6) of the Act (e) by which a constable or a person authorised by a justice of the peace may take to a place of safety, as defined in sect. 107 of the Act (f), any person under seventeen years who, there is reason to believe, is about to go abroad in contravention of sect. 25. The person so taken to a place of safety may be detained till he can be restored to his relatives or other arrangements can be made. In some cases it might be desirable for the local authority to bring the child or young person before a juvenile court as being in need of care or protection (g). [834]

**Saving for Education Act, 1921, and Exclusion of Approved Schools.**—Part II. of the Act of 1933, does not affect Part IV. of the Act of 1921 as to school attendance, or ss. 93 to 95 of that Act as to employment (h). Nor does Part II. (except ss. 25, 26) apply to an inmate of an approved school (i). [835]

**Powers of Entry.**—A local authority, or a police constable, having reasonable cause to believe that there is a contravention of the provisions of Part II. of the Act of 1933 (other than those as to employment abroad), or of the bye-laws as to employment, may apply to a justice of the peace for an order in writing, addressed to an officer of the local authority or a constable, empowering him to enter any place in or in connection with which the person in respect of whom the contravention is suspected is believed to be employed, or taking part in an entertainment or being trained, and to make enquiries relating to that person (k). The order may authorise entry at any reasonable time within forty-eight hours of the making of the order. The order must obviously bear not only a date, but a time to indicate when it was granted. The use of force in order to effect an entry is not authorised.

Further, any authorised officer of the local authority (*i.e.* authorised by the authority) or a constable may at any time (l) during the currency

(b) 26 Statutes 186.

(c) Act of 1933, s. 25 (9); 26 Statutes 189.

(d) S.R. & O., 1933, No. 992.

(e) 26 Statutes 190.

(f) *Ibid.*, 238.

(g) Under ss. 61, 62 of the Act; 26 Statutes 207, 208.

(h) See *ante*, p. 356.

(i) Act of 1933, s. 29 (3); 26 Statutes 191.

(k) *Ibid.*, s. 28 (1).

(l) *Ibid.*, s. 28 (2). The word "reasonable" does not occur in this sub-section as in sub-s. (1).

of a licence under sect. 22 of the Act (*m*) to take part in an entertainment, or under sect. 24 of the Act (*n*) to be trained to take part in performances of a dangerous nature, enter a place where the person to whom the licence relates is authorised by the licence to take part in an entertainment or to be trained, and make enquiries there about him (*o*).

The penalty for obstructing an officer or constable exercising powers under this section, or for refusal to answer an enquiry or for falsely answering it, is a fine not exceeding £20 (*p*). [836]

**Making and Evidence of Bye-laws.**—Bye-laws are not effective until confirmed by the Home Secretary (*q*). After a draft has been considered by him and provisionally approved, the bye-laws must be published by the local authority in such manner as he directs, and at least thirty days must elapse between publication and confirmation (*q*). Usually publication is regarded as sufficient if notices are inserted in the local newspapers. Persons affected or likely to be affected by the bye-laws may address objections to the Home Secretary, and he must consider them before confirming the bye-laws, and he may, if he thinks fit, order a local enquiry, and may determine the remuneration to be paid to the person holding it (*r*). The expenses of the inquiry, including any such remuneration, are to be paid by the local authority (*r*).

Without proof of the handwriting or official position of the person signing it, a certificate purporting to be signed by the clerk of the local authority endorsed upon a printed copy of a bye-law purporting to be made by the local authority may be given in evidence under sect. 252 of the L.G.A., 1933 (*s*). If the certificate states that the bye-law was made by the authority, that the copy is a true copy, that the bye-law was confirmed by the Secretary of State on a specified date, and specifies the date (if any) fixed by the Secretary of State for the bye-law to come into operation, the certificate is *prima facie* evidence of those facts. [837]

**Expenses of Administration.**—So far as the provisions of the Act and bye-laws relate to the employment of children, the expenses of administration will be defrayed by the local education authority as ordinary expenses of elementary education (*t*). As regards the administration of the provisions of the Act and bye-laws in relation to young persons (see especially the street trading provisions), the expenses of the county council other than expenses incurred by the council in their capacity of poor law authority will be defrayed as expenses for general county purposes, and the expenses of the county borough council will be met from the general rate (*u*). [838]

**Transfer and Delegation of Powers.**—A county council may arrange with the councils of boroughs and urban districts within the county, which are local education authorities for elementary education, for those councils to exercise and perform in their own areas such of the powers and duties of the county council under the Act of 1933 as may be agreed, on terms as to payment and otherwise to be agreed (*a*). The arrangement may either allow the borough or district council to perform functions instead of the county council, or as the agent of the county council (*a*).

(*m*) 26 Statutes 184.

(*n*) *Ibid.*, 186.

(*o*) Act of 1933, s. 28 (2); 26 Statutes 191.

(*q*) *Ibid.*, s. 27 (1).

(*p*) *Ibid.*, s. 28 (3).

(*s*) 26 Statutes 442.

(*r*) *Ibid.*, s. 27 (2).

(*u*) *Ibid.*, s. 96 (4).

(*t*) Act of 1933, s. 96 (3); 26 Statutes 232.

(*a*) *Ibid.*, s. 96 (2); 26 Statutes 232.

Sect. 96 (7) of the Act (*b*) allows a local authority to appoint a committee for the purposes of the Act, and to refer to that committee, or to any committee appointed for the purposes of any other Act, any matter relating to the exercise of their powers under the Act of 1933, and to delegate any of their powers, other than a power to borrow money, to any such committee. This is subject to sect. 4 of the Education Act, 1921 (*c*), which requires certain matters, connected with education, to be referred to the education committee. [839]

**Specimen Bye-laws.**—Specimen forms of bye-laws have been issued by the H.O. for the guidance of local authorities and may be purchased at H.M. Stationery Office (price 3d.). [839A]

**London.**—Under sect. 97 of the Act of 1933 (*d*), sect. 96 (which deals with the local authorities for the purposes of the Act) is modified in its application to the City of London, so that the powers and duties of a local authority under the Act as respects young persons, and as respects street trading and employment, become powers and duties of the Common Council and any expenses of the Common Council are defrayed out of the general rate of the City. Sect. 97 also provides that :

- (a) the powers and duties of a local authority with respect to the granting of licences for children to take part in entertainments shall be powers and duties of the L.C.C. in their capacity as local education authority for elementary education ; and
- (b) Nothing in the section shall exempt the City of London from the liability to contribute towards the expenses incurred by the L.C.C. as local authority under the Act, but the L.C.C. shall in each year repay to the Common Council any contributions paid by the Common Council in respect of persons under the care of the managers of an approved school. [840]

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(*b*) 26 Statutes 233.

(*c*) 7 Statutes 132.

(*d*) 26 Statutes 234.

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## ENCAMPMENTS

*See TENTS, SHEDS AND VANS.*

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## ENCEPHALITIS LETHARGICA

*See INFECTIOUS DISEASES.*

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## ENCROACHMENTS ON HIGHWAYS

*See OBSTACLES ON HIGHWAYS.*

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**ENDEMIC DISEASES***See INFECTIOUS DISEASES.***ENDOWED SCHOOLS***See NON-PROVIDED SCHOOLS.***ENGINEER, BOROUGH***See BOROUGH ENGINEER AND SURVEYOR.***ENGINEER, COUNTY***See COUNTY SURVEYOR.***ENGINEER, ELECTRICAL***See ELECTRICAL ENGINEER.***ENTERIC FEVER***See INFECTIOUS DISEASES.***ENTERTAINMENT DUTY***See MUSIC, SINGING, AND DANCING.*

## ENTERTAINMENTS, PROVISION OF

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*See also titles :*

BANDSTANDS ; CINEMATOGRAPHS ; COPYRIGHT AS AFFECTING LOCAL AUTHORITIES ;	MUSIC, SINGING AND DANCING ; PUBLIC PARKS ; SUNDAY ENTERTAINMENTS ; THEATRES .
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**Introduction.**—Sect. 74 of the P.H.A., 1848 (*a*), authorised local boards to provide and improve public walks and pleasure grounds (*b*). No general provision was made, however, until 1907, allowing local authorities to provide music in public parks or recreation grounds, but various towns obtained by local Act power to provide bands and concerts. Such towns were naturally those that laid themselves out to attract and entertain visitors, such as seaside towns or those with mineral baths and pump-rooms. [841]

**Bands.**—For example, sect. 90 of the Bournemouth Improvement Act, 1892 (*c*), gave the council power to pay, or contribute towards the payment of, a public band of music for the borough, subject to the condition that the amount expended in any one year did not amount to more than a rate of  $\frac{1}{2}d.$  in the pound. Harrogate purchased a large common called “The Stray,” and by sect. 17 of the Harrogate Corporation Act, 1893 (*d*), the council were authorised to erect and maintain temporary bandstands and shelters and inclosures on “The Stray,” and to pay annually or to contribute towards the payment of a band of music to perform on “The Stray” or on any public place in the borough, provided their expenditure on these objects did not amount to a rate of more than 1*d.* in the pound. [842]

By sect. 76 of the P.H.A. Amendment Act, 1907 (*e*), corresponding provisions were included in the general law, and, subject to any rules prescribing restrictions or conditions (*f*) which the M. of H. might make, the council of a borough or district in which the section has been put in force by order were given additional powers in regard to parks and pleasure grounds provided by them or under their management or control, one of which was “to provide or contribute towards the

(*a*) 11 & 12 Vict. c. 63. Replaced by the P.H.A., 1875, s. 164; 18 Statutes 693.

(*b*) See titles OPEN SPACES and PUBLIC PARKS.

(*c*) 55 & 56 Vict. c. clxiii.

(*d*) 56 & 57 Vict. c. ccix.

(*e*) 18 Statutes 938.

(*f*) No such rules have been made.

expenses of any band of music to perform in the park or ground ; to enclose any part of the park or ground, not exceeding one acre, for the convenience of persons listening to any band of music ; and charge admission thereto " (g). Any expenses incurred in the exercise of such powers were to be defrayed out of the fund or rate out of which the expenses of the park or ground were payable, and any receipts were to be credited to the same fund (h). No power was to be exercised under the section in such a manner as to contravene any covenant or condition subject to which a gift or lease of a public park or pleasure ground had been accepted or made, without the consent of the donor, grantor, lessor, or other person entitled in law to the benefit of such covenant or condition (i).

Any council of a borough or district may apply to the M. of H., under sect. 3 of the Act (k) for an order declaring this section to be in force either in the whole of the borough or district or in any contributory place within a rural district, and the Minister may prescribe conditions or adaptations in regard to particular areas.

By sect. 56 (2) of the P.H.A., 1925 (l), any enclosure set apart for bands may be used for any of the purposes of concerts or other entertainments. Since that time some corporations have gone further still and have obtained powers to pay or contribute towards the payment of public bands to perform in any place of public resort within the borough which is not a public park or pleasure ground. Sect. 255 of the Brighton Corporation Act, 1931 (m), for instance gives this power, provided that the amount of the payments or contributions do not amount to more than a half-penny rate. Section 56 of the P.H.A., 1925, is in force in any area to which sect. 76 of the Act of 1907 has been applied, or may be applied by an order of the Minister in the same way as sect. 76 of that Act (n). [843]

It was decided in *Wood v. Victoria Pier and Pavilion (Colwyn Bay) Co., Ltd.* (o), that in a contract by which a military band is employed to play at civilian entertainments for a week, there is an implied term that the engagement is subject to any claims upon the band as to their military duties. [844]

By sect. 17 of the Eastbourne Corporation Act, 1926 (p), power was given to the borough council in addition to any powers under the P.H.A., 1925, to pay for or contribute towards the provision of bands of music, concerts and other entertainments, whether held in parks or pleasure grounds or other places of public resort, or in buildings provided by the council or other bodies or persons, and in *A.G. v. Eastbourne Corporation* (q) it was held by the Court of Appeal that " bandstands " were buildings under the section. [845]

**Municipal Orchestras.**—Under the sections already mentioned of local Acts or the P.H.A. Amendment Act, 1907, and P.H.A., 1925, municipal orchestras have been provided by several councils of boroughs,

(g) S. 76 (1) (d) (e) ; 13 Statutes 939.

(h) S. 76 (2). As to amount of expenses incurred, see *post*.

(i) S. 76 (4).

(k) S. 3 (1) ; 13 Statutes 911. See also title ADOPTIVE ACTS.

(l) 13 Statutes 1139.

(m) 21 & 22 Geo. 5, c. cix.

(n) P.H.A., 1925, s. 2 (3) ; 13 Statutes 1116.

(o) (1912), 29 T. L. R. 317 ; 12 Digest 627, 5164.

(p) 16 & 17 Geo. 5, c. xciv.

(q) (1934), 78 Sol. Jo. 683 ; Digest (Supp.).

one of the best known of which is the Bournemouth orchestra formed after the passing of the local Act of 1892, when Sir Dan Godfrey, who was knighted in 1922, was appointed Director of Music. In 1931, the Harrogate council decided to abandon their municipal orchestra, which had been a feature of civic enterprise for nearly thirty years, and to substitute concert parties and bands (*r*). During that time a subsidy had been paid from the rates amounting to £60,000. The change, however, was not as successful as was hoped, and it was decided to engage the Eastbourne orchestra for a period of ten weeks, the Eastbourne council meanwhile engaging the concert party that had performed at Harrogate (*s*). In 1932 (*t*), the Torquay council, being concerned at the expense attaching to the hiring of military bands to perform during the summer months, set up a municipal band of their own as a substitute. They expected thereby to save £500 a year, as twelve of the musicians were taken from their municipal orchestra performing during the winter. These had all been members of H.M. Forces or had had military experience during the war, as had other members of bands in the town also engaged, the band in this way becoming a military band. It is thus no easy matter for the local authorities of towns which provide for the entertainment of visitors to decide which type of music is most likely to attract (*u*). [846]

**Concerts and Entertainments.**—By sect. 85 (2) of the Bournemouth Improvement Act, 1892 (*a*), the council were allowed to purchase or hire land for the erection of and to erect, maintain and furnish and equip reading rooms and assembly rooms, and to charge for admission. By other sections they were empowered to let such reading rooms and assembly rooms for the purpose of particular meetings or entertainments. By sect. 13 of an order relating to Boscombe and Bournemouth, which was confirmed by the Pier and Harbour Orders Confirmation (No. 5) Act, 1903 (*b*), somewhat similar powers of erecting pavilions, assembly rooms and concert rooms were given to the council in relation to the pier at Boscombe. By sect. 215 of the Bournemouth Corporation Act, 1930 (*c*), the council were allowed to provide and sell programmes at any concert or entertainment which they provide or to which they contribute, in any park or pleasure ground in the borough, and to authorise any persons to provide and sell such programmes.

The Bournemouth Improvement Act, 1892, was followed in sect. 76 (1) of the P.H.A. Amendment Act, 1907, as the powers include (*d*) those given to Bournemouth in regard to the provision of pavilions and other buildings, and for the letting of them for the purposes of entertainments, with the provisos as to expenses and contravention of covenants or conditions in regard to a gift or lease already mentioned (*e*). By sect. 77 a local authority invested with the powers of the section may appoint officers for securing the observance of sects. 76, 77, and any regulations and bye-laws made under sect. 76, and may procure these officers to be sworn in as constables for the purpose. Any such officer, however, must not act as a constable unless in uniform or provided with a warrant. [847]

(*r*) (1931), Municipal Review, Vol. II., p. 2.

(*s*) (1932), *ibid.*, Vol. III., p. 183. (*t*) *Ibid.*, p. 279.

(*u*) As to the licensing of places for music, etc., see title MUSIC, SINGING AND DANCING.

(*a*) 55 & 56 Vict. c. clxiii.

(*b*) 3 Edw. 7, c. exxxi.

(*c*) 20 & 21 Geo. 5, c. clxxxii.

(*d*) S. 76 (1) (g) (h); 13 Statutes 939.

(*e*) S. 76 (2), (4). *Ante*, p. 370.

Sect. 56 of the P.H.A., 1925 (*f*), adds the following powers with respect to any public park or pleasure ground provided by the council, or under their management and control, to those in sect. 76 of the Act of 1907: (1) to provide, or contribute towards the expenses of, any concert or other entertainment given in the park or ground; (2) for the purpose of these concerts and entertainments, to enclose any part of the park or ground not exceeding one acre or one-tenth of the area of the park or ground, whichever is the greater; and (3) to charge for admission to the concerts or entertainments provided by the council, or to let the part of the park or ground so enclosed to any person for the same objects, and to authorise that person to charge for admission. There are certain restrictions, however, imposed, in regard to concerts and entertainments, where these are provided by the council themselves. These are (i.) that no stage play must be performed; (ii.) that the concert or other entertainment must not include any performance in the nature of a variety entertainment; (iii.) that no cinematograph film may be shown, except those illustrative of questions relating to health or disease, and (iv.) that no scenery, theatrical costumes or scenic or theatrical accessories may be used. As already mentioned (*g*), parts of the parks or grounds enclosed for bands may be used also for concerts and other entertainments, and it is important to notice that the above restrictions, which were included in the Act to meet objections taken on behalf of the theatrical profession and lessees of theatres, do not apply where an enclosure or building is let for a concert or an entertainment.

Expenditure, that is the net expenditure on bands, and on concerts or entertainments (*h*), after allowing for the receipts, must not, when added together, exceed in any one year, a rate of 1*d.* in the pound, or such higher rate not exceeding 2*d.* in the pound as the M. of H. may approve. By sect. 75 of the L.G.A., 1929 (*i*), on account of the derating provisions of that Act, this limit was increased by 33 $\frac{1}{3}$  per cent. or by such higher percentage as the Minister may allow.

By sect. 70 of the P.H.A., 1925 (*k*), any offices provided by the council of a borough or district for the transaction of business may also be used by them for the purposes of concerts or other entertainments provided by them or by any other person, or they may be let for such purposes, at such times and in such a manner as will not interfere in any way with the transaction of the business of the council. Where a concert or entertainment is provided by the council themselves, this use is subject to the restrictions on the performance mentioned already. Any liabilities so incurred are under the L.G.A., 1933, to be discharged out of the general rate fund of the council (*l*), and any receipts are to be carried to the same fund.

By sect. 87 (1) of the P.H.A., 1925 (*m*) any swimming bath provided by a council under the Baths and Washhouses Acts, 1847 to 1925, may be closed during any period between October 1 and April 30, and may be used for concerts and entertainments, but if the council themselves provide the concert or entertainment the user is again subject to the restrictions already mentioned. No swimming bath may be used for

(*f*) 13 Statutes 1129.

(*g*) S. 56 (2). *Ante*, p. 370.

(*i*) 10 Statutes 932.

(*l*) Ss. 185, 188, 190; 26 Statutes 407—409. S. 70 (2) of P.H.A., 1925, is repealed by the Act of 1933.

(*m*) 13 Statutes 1154. See also title BATHS AND WASHHOUSES.

(*h*) S. 56 (3), (4).

(*k*) 13 Statutes 1147.

the public performance of stage plays, public music, dancing or entertainment of the like kind, or cinematograph films, unless the necessary licences have been obtained and any regulations observed (*n*). [848]

Additions to these powers have been made by recent local Acts. For instance, by sect. 135 of the Salford Corporation Act, 1933 (*o*), the council may provide concerts and entertainments in any public hall, pavilion, or assembly rooms erected by them under sect. 134 of the Act, whether theatrical costume is or is not used, and either with or without appropriate scenery. The council, however, must not use any such building as a cinema, and must not themselves provide or arrange for the provision or carrying on of stage plays performed by persons other than members (resident or near the city) of any amateur dramatic society, nor any entertainment for which scenery or theatrical costume is used which forms a complete programme of variety entertainment as usually given at a music hall. They also may provide and sell, or authorise the provision and sale of, programmes, may make bye-laws as to the good and orderly conduct of the concerts or entertainments, and may place advertisements of them in public places, on omnibuses, trams and trolley cars, and in newspapers. They must not, however, spend more than a rate of 1*d.* on these objects. [849]

**Copyright and the Performing Right Society.**—The subject of copyright as affecting local authorities is dealt with generally in the title under that name, but there are special points that apply in connection with bands, concerts and entertainments. Under the Copyright Act, 1911, the right to perform any work (as defined by the Act) is one of the constituent parts of copyright (*p*), and the author of the work has the sole right of performing or authorising the performance of the work in public. It has been generally appreciated that the consent of the composer, author or owner of the copyright is necessary before such works as operas or plays are performed in public, and permission has usually been asked; but in regard to shorter works, such as sonatas, instrumental works, suites, songs and dance numbers, ignorance led to the frequent violation of the rights of the owner. Again, while it is a simple matter to arrange for the payment of the necessary fees in regard to large works direct to the owner, in the case of short works, performed publicly thousands of times daily at all sorts of entertainments throughout the country, it is a practical impossibility to communicate separately with the copyright owner of every piece of music on each occasion.

The Performing Right Society was therefore formed (*q*) to collect fees for the public performance of the works of the composers, authors and publishers and proprietors of copyright musical works, who were members of the Society, and to restrain unauthorised public performances. Most of the civilised countries have enacted legislation similar to that of the British Copyright Act of 1911, and have either joined an International Copyright Convention or concluded copyright treaties with other countries whereby each country extends the same protection in its own territory to the works of foreigners as it does to the works of its own nationals; and societies in other countries, similar in objects to those of the Performing Right Society, are affiliated with the British Society. The policy of the Society is to grant a licence for an

(*n*) S. 87 (4); and see titles CINEMATOGRAPHS, and MUSIC, SINGING AND DANCING.

(*o*) 23 & 24 Geo. 5, c. lxxxix., s. 135.

(*p*) S. 1 (2) (a); 3 Statutes 722.

(*q*) Copyright House, 38 Margaret Street, London, W.1.

annual fee to promoters of musical entertainments, covering by a general permission the public performance of any of the works which the Society controls. Such a licence could therefore be granted to any local authority who have decided to exercise their powers as to bands, concerts and entertainments described above. Special permits are in certain cases issued to the promoters of entertainments for the use of a repertoire at one performance, or at a short series of performances, and the fees for such licences or permits are assessed in accordance with graded tariffs applicable to the various classes of entertainment. A special tariff has been arranged for local authorities (*r*) covering musical performances at all halls, buildings, parks, piers, pleasure gardens, bandstands, or other places which are the property of or controlled by the authority. The Society's annual charge for a licence where entertainments of which music forms a part are provided by or on behalf of, or are subsidised by, the licensee is shown on p. 60 of Vol. IV. The Society's licence contains a provision that the licensee will furnish periodical returns of the music performed under the licence, and the fees collected by the Society, less working expenses, are distributed among the composers and other copyright owners who are members of the Society or of the affiliated foreign societies. It has been judicially decided (*s*) that the Society is not a trade union within the Trade Union Acts, 1871 to 1927 (*t*), and also that the arrangements were made for legitimate business reasons, and were not champertous (*u*). The Society's licence or permission is necessary for any public performance of the copyright music it controls, without regard to the nature of the entertainment, the means by which the performance is given (whether mechanical or otherwise), the nature or designation of the premises at which the performance takes place, and irrespective of whether a charge for admission is made or otherwise. It should be noted that all British music published since the coming into force of the Copyright Act, 1911, is *ipso facto* copyright, and no notice of the reservation of the right of public performance is required to be printed on copies. There is in addition a large quantity of music, both British and foreign, published before that Act, which is also copyright. [850]

The Society has had on various occasions to take legal proceedings for infringement of performing rights in respect of the musical works of its members and those of its affiliated societies, and damages have been granted, with injunctions against further performances. It was decided by the Judicial Committee of the Privy Council in *Performing Right Society v. Bray U.D.C.* (*a*), on appeal from the Supreme Court of the Irish Free State, that a local authority commits an infringement of sect. 2 (1) of the Copyright Act, 1911 (*b*), if a band which it has engaged to perform, plays in public, without consent, copyrighted musical works which are included in a programme approved by the local authority. It was also decided in the same case that though, in the case of a local authority, profits were applied to the relief

(*r*) See Tariff "M," issued in leaflet form by the Society, and leaflet R containing a list of the music publishers who are members of the Society.

(*s*) See *Performing Right Society v. London Theatre of Varieties*, [1924] A. C. 1; 43 Digest 129, 1315.

(*t*) 19 Statutes 638 *et seq.*

(*u*) *Performing Rights Society v. Thompson* (1918), 34 T. L. R. 351; 13 Digest 217, 537.

(*a*) [1930] A. C. 377; Digest (Supp.).

(*b*) 3 Statutes 723.

of the rates, the performance was for their "private profit" within the meaning of sect. 2 (3) of the Act.

As to mechanical performances it was decided in *Performing Right Society v. Hammond's Bradford Brewery Co., Ltd.* (c), that the use of a wireless set and loudspeaker for the purpose of reproducing copyright works for the benefit of guests at an hotel involves an infringement of copyright, and in *Gramophone Co., Ltd. v. Stephen Caravardine & Co.* (d), that the maker of a gramophone record has the sole right to use the record for public performances, subject to the overriding rights of the owner of the original copyright as the author or composer under sect. 1 of the Copyright Act, 1911 (e). [851]

**London.**—The powers under the L.C.C. (General Powers) Acts, 1890 and 1893, which allow the L.C.C. to provide or subsidise public bands, are summarised on p. 546 of Vol. I.

Sect. 29 of the L.C.C. (General Powers) Act, 1921 (f), empowers the council to provide places for dancing in any park or open space and to provide in connection therewith platforms and other conveniences. In such cases it is provided that a licence for public music or dancing shall not be required.

During the financial year 1931—32, the council expended £12,969 in bands and concert parties in parks and open spaces, but receipts of £2,382 reduced their net expenditure to £10,587, during this year. [852]

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(c) [1934] Ch. 121; Digest (Supp.).  
(e) 3 Statutes 720.

(d) [1934] Ch. 450.  
(f) 11 Statutes 1355.

## ENTERTAINMENTS, SUNDAY

*See SUNDAY ENTERTAINMENTS.*

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## EPIDEMIC DISEASES

*See INFECTIOUS DISEASES.*

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## EPILEPTIC CHILDREN

*See BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN.*

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## EQUALISATION OF RATES

*See LONDON, RATING IN.*

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## EQUATION OF LOAN PERIODS

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## ESPLANADES, PROMENADES, AND BEACHES

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*See also titles :*

BANDSTANDS ;  
BATHING ;  
GARDENS AND SQUARES ;  
OPEN SPACES ;

PUBLIC PARKS ;  
SEA DEFENCE WORKS ;  
SEASHORE.

FOR THE GENERAL LAW RELATING TO FORESHORE, *see HALSBURY'S LAWS OF ENGLAND*, VOL. 28, TITLE "WATERS AND WATERCOURSES."

**Preliminary.**—It is intended in this article to deal with the powers of a local authority as to the making, layout, maintenance and control of esplanades, promenades, ornamental gardens, beaches, etc., and the control of trading and conduct of persons on the seashore.

There is no statutory definition of any of the three words used in the title of this article. The word "esplanade" (from Spanish *explanar*—to level) is generally used to indicate any clear level space of ground, especially one used for a public walk or drive. A "promenade" in the common acceptation of the word means "a space where people walk up and down for the purpose of getting the benefit of the air, or of the sea air if it happens to be at the seaside" (a). The word "beach" is generally used as equivalent to the foreshore or seashore,

(a) *A.-G. v. Blackpool Corp.* (1907), 71 J. P. 478, per Vice-Chancellor LEIGH CLARE at p. 480; 33 Digest 56, 340, in which case it was held to be an abuse of the promenade to allow it to be used for motor races.

and in this title the words "beach," "foreshore" and "seashore" will be used interchangeably as indicating that part of the shore which lies between high- and low-water marks at the medium tides which occur between the spring tides and neap tides (b). [853]

*Prima facie* the foreshore is vested in the Crown, but may become vested in a subject by a grant from the Crown, or by user from which a lost grant may be presumed. Many local authorities have acquired the foreshore by purchase, under the powers set out later, from the lord of the manor or some other person claiming through the Crown.

The seashore or foreshore as above-defined is within the jurisdiction of the civil and criminal courts, and the justices of the adjoining county have cognisance of offences committed there whether committed when the shore is or is not covered with water (c). The seashore does not, however, in the absence of evidence, form part of the adjoining parish, but is *prima facie extra parochial* (d). But by sect. 144 of L.G.A., 1933 (e), replacing sect. 27 of the Poor Law Amendment Act, 1868 (f), every accretion from the sea, whether natural or artificial, and any part of the seashore to low-water mark which did not on June 1, 1934, form part of a parish, was annexed to and incorporated with the parish which it adjoined, for all local government purposes; and is therefore liable to be rated to local rates. It was decided that sect. 27 of the Act of 1868 did not apply to structures below the low-water mark which are outside the realm and cannot be rated (g). But where the seashore or bed of the sea is reclaimed by an enclosure and the water is excluded, the site so enclosed is an artificial accretion within the meaning of the Act of 1868 and became incorporated with the adjoining parish (h).

The rights of the public in general and other points as regards the seashore will be dealt with in the title SEASHORE. [854]

**Power of Local Authority to Provide, Lay Out and Control Esplanades, Promenades and Beaches.**—As esplanades, promenades and beaches are usually in the nature of public walks or pleasure grounds within the meaning of the P.H.As., 1875 to 1932, or open spaces within the Open Spaces Act, 1906 (i), it will be found that the powers to provide, maintain, improve and control them are derived from these series of Acts, in the absence of a local Act (k).

By sect. 164 of the P.H.A., 1875 (l), a local authority under the P.H.As. (m), may purchase or take on lease, lay out, plant, improve

(b) *A.-G. v. Chambers* (1854), 4 De G. M. & G. 206; 44 Digest 65, 457; *Mellor v. Walmsley*, [1905] 2 Ch. 164; 44 Digest 66, 471. As to meaning of "shore," see *Scrutton v. Brown* (1825), 4 B. & C. 485; 44 Digest 69, 504.

(c) *Embleton v. Brown* (1860), 3 E. & E. 234; 25 Digest 62, 516.

(d) *R. v. Musson* (1858), 8 E. & B. 900; 44 Digest 80, 615.

(e) 26 Statutes 383.

(f) 10 Statutes 558.

(g) *Blackpool Pier Co. v. Fylde Union* (1877), 46 L. J. (M. C.) 189; 38 Digest 512, 663.

(h) *Barwick v. South Eastern and Chatham Rail. Cos.*, [1921] 1 K. B. 187; 44 Digest 70, 509.

(i) 12 Statutes 382.

(k) For typical examples of powers contained in recent local Acts, see Bridlington Corpn. Act, 1933 (23 & 24 Geo. 5, c. lxxiii.), Part IV. and Lowestoft Corpn. Act, 1934 (24 & 25 Geo. 5, c. lxxv.), Part IV.

(l) 13 Statutes 693. Extended to R.D.Cs. by S.R. & O., 1931, No. 580; 24 Statutes 262.

(m) The council of a borough, urban district or rural district.

and maintain lands to be used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person. They may also make bye-laws for the regulation of any such public walk or pleasure ground and provide for the removal of any person infringing any such bye-law. Model bye-laws have been issued by the M. of H. under this section (n).

[855]

By sect. 45 of the P.H.A. Amendment Act, 1890 (o), the above powers are extended to include a power to contribute towards the purchase, laying out or improvement of lands provided by any person, if permanently set apart as public walks and pleasure grounds, and whether within the district or not. By sect. 8 (1) (d) of the L.G.A., 1894 (p), similar powers were conferred on parish councils.

Almost identical powers are conferred upon county councils, and borough and district councils by sects. 9, 10, 14, of the Open Spaces Act, 1906 (q), and a county council may also invest a parish council with them (r).

Reference may also be made to the Public Improvements Act, 1860 (s), but this Act is adoptive and is rarely used. [856]

Apart from the above statutory provisions, where the seashore or property adjoining it is vested in the council of a borough or district, loans have been sanctioned for sea defences under the P.H.A., 1875, generally in connection with esplanades and promenades, it being recognised that a local authority are entitled to spend money in protecting their property from inroads by the sea. [857]

**Further General Powers of Management by Local Authority.**—A local authority has no general power of charging for admission to or closing any public walk or pleasure ground, but where Part III. of the P.H.A. Amendment Act, 1890, is in force, sect. 44 of that Act (t), gives the council a limited power of closing a park or pleasure ground, charging for admission to it, and allowing its use for public or charitable purposes. This power would apply to the seashore or ornamental gardens, but not to a long strip of ground such as a promenade, quite unsuitable for any of the purposes referred to (a).

Where sects. 76, 77 of the P.H.A. Amendment Act, 1907 (b), have been put in force by an order of the Local Government Board or M. of H., the council are given further extensive powers, including powers of providing and letting pavilions, refreshment and other rooms, of placing seats, of providing bands, and of enclosing parts of the ground for the

(n) These may be purchased of H.M. Stationery Office, Kingsway, W.C.2, price 3d., also a simpler series primarily drawn up for parish councils' use.

(o) 13 Statutes 841. In force in all boroughs and urban districts for which Part III. of the Act has been adopted, but put in force in all rural districts by virtue of S.R. & O., 1931, No. 580 ; 24 Statutes 262.

(p) 10 Statutes 780.

(q) 12 Statutes 387, 389.

(r) Open Spaces Act, 1906, s. 1 ; 12 Statutes 382.

(s) 12 Statutes 371.

(t) 13 Statutes 841. Part III. is adoptive by a borough council or U.D.C., but s. 44 of the Act has been put in force in rural districts by S.R. & O., 1931, No. 580 ; 24 Statutes 262.

(a) *A.-G. v. Blackpool Corpn.* (1907), 71 J. P. 478 ; 33 Digest 56, 340, per Vice-Chancellor LEIGH CLARE, at p. 480.

(b) 13 Statutes 938, 939. But see s. 12 of the Act as to Crown Rights and consent of Board of Trade and Commissioners of Crown Lands.

convenience of listeners and of charging for admission. These powers are further extended by the P.H.A., 1925 (c). [858]

Recent local Acts obtained by the councils of seaside towns have contained provisions greatly extending these powers, and have given power to establish, manage and let conservatories, entertainment halls, ornamental gardens, bathing, boating and swimming pools, model yacht ponds, booths, stalls, stands, chairs, etc., on the seashore and to provide concerts and other entertainments (d).

For an elaboration of the general statutory powers above outlined, see titles OPEN SPACES; PUBLIC PARKS; ENTERTAINMENTS, PROVISION OF; and BANDSTANDS. For the case law relating to Pleasure Grounds, see 36 Digest 245—253. [859]

**Acquisition of Land.**—See, generally, the titles ACQUISITION OF LAND and COMPULSORY PURCHASE OF LAND.

A useful form of conveyance of the seashore will be found in 6 Ency. Forms 526.

As respects a compulsory purchase of land, if a purchase under the P.H.As. is proposed, a power of compulsory purchase was conferred by sect. 176 of the P.H.A., 1875 (e), now repealed by the L.G.A., 1933, but the power of obtaining from the M. of H. a provisional order authorising a compulsory purchase is preserved by sect. 160 of that Act (f). On the other hand, the power of acquiring land under sect. 9 of the Open Spaces Act, 1906 (g), is expressly limited to acquisitions by agreement and a compulsory acquisition of land under this section could not be authorised, except where a metropolitan borough council proposed to purchase (h). An independent power of purchasing land is, however, given, to county councils only, by sect. 14 of the Act of 1906 (i), without any express limitation to purchases by agreement, and as sect. 176 of the P.H.A., 1875 (j), was applied to county councils by sect. 65 (2) of the L.G.A., 1888 (k), for the purchase of land for the purpose of any of their powers and duties, it would seem that here again a provisional order could be made by the M. of H. under sect. 160 of the L.G.A., 1933 (l), authorising a county council to purchase land compulsorily under sect. 14 of the Open Spaces Act, 1906. [860]

**Control of Ornamental Gardens.**—The Town Gardens Protection Act, 1863 (m), provides that when in any city or borough any enclosed garden or ornamental ground has been set apart, otherwise than by the revocable permission of the owner thereof, in any public square, crescent, circus, street, or other public place for the use or enjoyment of the inhabitants thereof, and where the trustees or other body

(c) S. 56; 13 Statutes 1189. In force wherever Part VI. of the Act of 1907 is in force.

(d) Ss. 47, 49 and 52, Bridlington Corpn. Act, 1933 (23 & 24 Geo. 5, c. lxxiii.); and ss. 21 and 24 Lowestoft Corpn. Act, 1934 (24 & 25 Geo. 5, c. lxxv.).

(e) 13 Statutes 700.

(f) 26 Statutes 393.

(g) 12 Statutes 387.

(h) See s. 2 and Part I. of the First Schedule to Public Works Facilities Act, 1930 (23 Statutes 773, 777), as continued in force by the Expiring Laws Continuance Act, 1934; 27 Statutes 527.

(i) 12 Statutes 389.

(j) 13 Statutes 700.

(k) 10 Statutes 739.

(l) 26 Statutes 393.

(m) 12 Statutes 372.

appointed for the care of the same have neglected to keep it in proper order, or where such garden or ground has not been vested or placed in the management of trustees, etc., for the care of the same, and from want of such care or any other cause has been neglected, the corporate authorities shall take charge of the same, putting up a notice to that effect in such garden or ground. It has been decided that inhabitants must have a legal right to the use and enjoyment of the garden or ground (*n*). See also title GARDENS AND SQUARES.

Where enclosed gardens or ornamental grounds near the sea satisfy the conditions of the Act, a borough council might act under it, but the Act does not extend to an urban or rural district. [861]

**Bye-laws.** *As to Promenades.*—Where sect. 83 of the P.H.A. Amendment Act, 1907 (*o*), has been put in force by an order of the Home Secretary in a borough, urban or rural district, or a contributory place of a rural district (*p*), the council may for the prevention of danger, obstruction or annoyance to persons using the esplanades or promenades within the district make bye-laws prescribing the nature of the traffic for which they may be used, regulating the selling and hawking of any article, commodity or thing thereon, and for the preservation of order and good conduct among the persons using the same.

Bye-laws relating to promenades are usually limited to dealing with the driving or riding of vehicles and the deposit of offal and offensive matter, as most of the offences likely to be committed upon promenades are dealt with under sects. 28, 29 of the Town Police Clauses Act, 1847 (*q*), and other enactments regulating conduct in streets and public places. [862]

*As to the Seashore.*—Where a similar order has been made declaring sect. 82 of the same Act (*r*) to be in force, the council may for the prevention of danger, obstruction or annoyance to persons using the seashore make and enforce bye-laws to :

- (1) Regulate the erection or placing on the seashore, or on such part or parts thereof as may be prescribed by such bye-laws, of any booths, tents, sheds, stands, and stalls (whether fixed or movable), or vehicles for the sale or exposure of any article or thing, or any shows, exhibitions, performances, swings, roundabouts, or other erections, vans, photographic carts, or other vehicles, whether drawn or propelled by animals, persons or any mechanical power, and the playing of any games on the seashore, and generally regulate the user of the seashore for such purposes as shall be prescribed by such bye-laws.
- (2) Regulate the user of the seashore for riding and driving.
- (3) Regulate the selling and hawking of any article, commodity or thing on the seashore.
- (4) Provide for the preservation of order and good conduct among persons using the seashore.

(*n*) See *Tulk v. Met. Board of Works* (1868), L. R. 3 Q. B. 682; 36 Digest 248, 24.

(*o*) 13 Statutes 941.

(*p*) Under s. 3 (1), (4); 13 Statutes 911, 912.

(*q*) 19 Statutes 38—43.

(*r*) 13 Statutes 941.

But no bye-laws affecting the foreshore below high-water mark can come into operation until the consent of the Board of Trade has been obtained (s). [863]

There is no definition in the Act of "seashore." The proviso to sect. 82 would seem to indicate that the word in the section includes the foreshore *and* land *above* high-water mark. The application of the section is not limited to such part of the seashore as is vested in the local authority (as in similar sections in certain local Acts) and apparently bye-laws made under sect. 82 may extend to the whole of the seashore within the borough, district or contributory place, regardless of its ownership. Bye-laws of this kind almost invariably contain, however, a clause saving the rights of the Crown, as well as public rights and rights legally exercisable by any person in respect of the seashore. Local authorities should not promulgate bye-laws in such a manner as to encourage any encroachment upon the rights of private owners of the seashore without permission (t). It should be observed that only regulation and not prohibition of the acts referred to is authorised.

[864]

It is understood that the H.O. will not confirm bye-laws under sect. 82, unless a portion of the beach is set aside for special purposes. This causes difficulties where at high water practically the whole of the beach is covered and it is impracticable to set aside any space for special purposes. In some places it is believed that this difficulty is overcome by making regulations which, however, are only enforceable by civil action and then only if the council have the necessary proprietary rights over the beach.

Bye-laws relating to the seashore usually deal with the following matters: the regulation of booths, tents, etc., meetings and entertainments, games, selling and hawking, begging and touting, noisy instruments, etc., barking dogs, broken glass, carpet beating, riding and driving animals, motors, etc. [865]

*Confirmation of Bye-laws.*—Bye-laws made under sect. 82 or 83 of the P.H.A. Amendment Act, 1907, require confirmation by the Home Secretary (u), and the provisions respecting bye-laws in sect. 250 of the L.G.A., 1933 (a), extend to such bye-laws by reason of sub-sect. (1) (b) of that section, which applies sect. 250 to bye-laws to be made by a local authority by virtue of the P.H.As., 1875—1932. Sects. 251, 252 of the Act of 1933 (b), also apply.

If, however, an esplanade or gardens near the sea have been provided or are kept up by the council under sect. 164 of the P.H.A., 1875 (c), or a lease of the foreshore has been taken by the council under that section, bye-laws for its regulation may be made under that section, or, if under sects. 9 or 14 of the Open Spaces Act, 1906 (d), bye-laws for the regulation of the open space may be made under sect. 15 of that Act. In both these instances, the bye-laws would be subject to confirmation by the M. of H., not the Home Secretary. Sects. 250—252, of L.G.A., 1933 (e), would also extend to them. [866]

(s) P.H.A. (Amendment) Act, 1907, s. 82; 13 Statutes 941; and see also s. 12; 13 Statutes 914.

(t) *Conyngham (Marquis) v. Broadstairs and St. Peters R.D.C.* (1911), *Times* Newspaper, June 22.

(u) S. 9; 13 Statutes 914; and s. 250 (10) of L.G.A., 1933; 26 Statutes 441.

(a) 26 Statutes 440.

(b) *Ibid.*, 442.

(d) 12 Statutes 387, 389.

(c) 13 Statutes 693.

(e) 26 Statutes 440—442.

*Cases on Bye-laws.*—The attributes which attach to bye-laws are discussed in the title BYE-LAWS at pp. 365—371 of Vol. II., but the following cases with regard to the validity of bye-laws made under enactments, more or less similar in scope to sect. 82 of the Act of 1907, may usefully be referred to.

A local authority who had purchased the sea beach and foreshore in their district for the purposes of an esplanade and public walk or pleasure ground made a bye-law expressed to be made under their local Act and under sect. 164 of the P.H.A., 1875 (f), prohibiting the sale of goods and the hiring of seats on any part of the sea beach, foreshore or esplanade except by direction of the authority, or in such part as might be appointed by them by notice. This bye-law was held to be *intra vires* and good, a distinction being drawn between such bye-laws and those made for the good government of a borough (g). A bye-law was, however, held to be unreasonable and therefore invalid which prohibited a person from selling, hawking or offering for sale any article, except in pursuance of an agreement with the corporation, on the beach or foreshore, on the ground that it gave the corporation power to make any agreement they chose without regard to the question of reasonableness or unreasonableness, and that it reserved to them a right to refuse to give a licence to any particular person. The corporation held the beach and foreshore to which the bye-law related on lease; but this fact was not referred to by the court (h). [867]

A local authority who held the foreshore as tenants, acting under a section in a local Act which authorised the making of bye-laws for regulating the selling and hawking of articles on the seashore, made a bye-law providing that where any part of the shore had been set apart by them by notice for the sale and hawking of such articles as should be specified in the notice, no person should sell or hawk such articles elsewhere on the shore. In pursuance of this bye-law, they issued notices setting apart a part of the shore for the sale of certain articles and intimating that any person desirous of selling those articles must obtain a permit, for which a weekly charge would be made, and that permits would only be issued to residents in the district. This notice was held to be incorporated with the bye-law and to render it *ultra vires* and unreasonable on the ground that the section authorising the making of the bye-laws did not authorise the authority to charge for a permit nor to restrict permits to residents (i). [868]

A local Act authorised bye-laws for prohibiting or regulating the erection on the foreshore of any booth or other erection which in the opinion of the council might be a cause of danger, obstruction, nuisance or annoyance. The council made a bye-law forbidding the erection of any booth or other erection, but the prohibition was not to apply to any case where they granted permission for the erection and any conditions imposed by them were complied with. This bye-law was held to be good (although the reference to danger, obstruction, etc., was omitted from it), on the ground that the local Act gave power to the council to say that any booth or erection was *prima facie* a cause of danger, obstruction, nuisance or annoyance, and the bye-law was not rendered invalid by the fact that they had reserved to themselves power to grant permission in particular cases. In so holding, the court relied on the

(f) 13 Statutes 693.

(g) *Gray v. Sylvester* (1897), 61 J. P. 807; 38 Digest 165, 105.

(h) *Parker v. Bournemouth Corp.* (1902), 86 L. T. 449; 38 Digest 165, 107.

(i) *Moorman v. Tordoff* (1908), 98 L. T. 416; 38 Digest 160, 72.

express power of prohibition given by the enactment, and distinguished *Parker v. Bournemouth Corporation* (*ante*) on the ground that the enactment under which the bye-law in that case was made authorised the regulation only and not the prohibition of the matters with which it dealt (k). [869]

In another case relating to hawking on the seashore (l), CHANNELL, J., said : "The cases go to the length of saying that under the pretence of regulating, the corporation would have no power to prohibit. But I certainly think that regulating may include prohibiting in one part and allowing it in another part. If you set apart for the thing that you may not prohibit, a space that is wholly insufficient and obviously illusory so that you are in substance prohibiting the thing being done at all, then that bye-law would be bad. But to make it bad on that ground you want some tribunal knowing the facts to find the facts and to find that it is illusory"; and *semble*, per Lord COLERIDGE (in the same case) where a local authority have power to make bye-laws for preventing danger, obstruction, nuisances and annoyance to persons using the seashore, they may make a bye-law prohibiting hawking altogether, if such hawking amounts to such danger, obstruction, nuisance or annoyance. [870]

A power to make bye-laws for the preservation of order and good conduct among persons frequenting the parades, foreshore and sands was held to justify a bye-law prohibiting speeches and meetings except on such portions of the parades, etc., as the corporation might by notice appoint for the purpose and subject to such conditions as they should prescribe. The court upheld the conviction of a member of the Salvation Army, who conducted a religious service, in an admittedly orderly manner, on a portion of the foreshore which was not one of the places so appointed. It was held that as the power of fixing the places at which addresses might be delivered was set out in the bye-law, it was unnecessary to submit the notices for approval to the Government department confirming the bye-laws, and that the bye-law was valid (m): [871]

*Offences and Penalties.*—As to legal proceedings and penalties for breach of bye-laws, see sect. 6 of the P.H.A. Amendment Act, 1907 (n), and sect. 251 of L.G.A., 1933 (o), which applies wherever sect. 250 of that Act applies to bye-laws. [872]

**Regulation of Advertisements.**—A local authority—that is, a town council, an U.D.C. with a population exceeding 10,000, a county council, or an U.D.C. to whom the county council have delegated powers—may make bye-laws applying to the whole or any part of their area for regulating the exhibition of advertisements which affect injuriously the amenities of a public park or promenade or disfigure the natural

(k) *Williams v. Weston-super-Mare U.D.C.* (No. 1), (1907), 72 J. P. 54; followed in Ch. D. (1910), 74 J. P. 52, 370; 38 Digest 160, 75, 76.

(l) *Cassell v. Jones* (1913), 77 J. P. 197; 38 Digest 160, 73.

(m) *Slee v. Meadows* (1911), 105 L. T. 127; 38 Digest 161, 77. There is no legal right for the public to enter on a seashore vested in or leased to the local authority for the purpose of holding meetings. The common law rights of the public are limited to access for navigation or fishing, see *Llandudno U.D.C. v. Woods*, [1899] 2 Ch. 705; 44 Digest 77, 575, and *Brighton Corpn. v. Packham* (1908), 72 J. P. 318; 44 Digest 77, 576.

(n) 13 Statutes 918.

(o) 26 Statutes 442.

beauty of the landscape (*p*). These powers are extended by sect. 1 of the Advertisements Regulation Act, 1925 (*q*). Recent local Acts have contained provisions enabling the council to require the abatement (by the removal of the advertisement if necessary) of any serious injury caused to the amenities of any public place by the display of advertisements (*r*). See also title ADVERTISEMENTS. [873]

**Misconduct on Esplanades, Promenades and Beaches.**—Where sect. 81 of the P.H.A. Amendment Act, 1907 (*s*), has been put in force by an order of the Home Secretary, any place of public resort or recreation ground (and therefore any esplanade, promenade or beach) belonging to or under the control of the authority is constituted an open or public place for the purpose of the Vagrancy Act, 1824 (*t*), and any amending Act. These Acts relate to (*inter alia*) fortune telling, absence of visible means of support, exposing obscene prints, etc. Any such place is also regarded as a street for the purposes of sect. 29 of the Town Police Clauses Act, 1847 (*u*) (which imposes a penalty on any person drunk in any street and guilty of riotous or indecent behaviour therein) and for the purposes of such of the provisions of sect. 28 (*a*) of that Act as are specified in sect. 81 of the Act of 1907. These provisions relate to ferocious dogs at large, furious riding or driving, solicitation, indecent exposure, the sale of indecent books, etc., the singing of profane or obscene songs or the use of profane or obscene language, the discharge of firearms or missiles, the making of bonfires and the throwing or laying of dirt, etc., on any street.

Frequenting or loitering in a "public place" (which is defined to include a public park, garden or seabeach or any unenclosed ground to which the public have for the time being unrestricted access) for the purpose of bookmaking or betting is an offence under sect. 1 of the Street Betting Act, 1906 (*b*). [874]

**Local Legislation as to Conduct.**—Recent local Acts of Parliament have contained clauses prohibiting touting and, subject to certain exceptions, hawking, etc., on the esplanades, seashore and *seafront* or within a specified distance therefrom. No general Act entirely prohibits touting, but only permits its regulation. In certain of the local Acts the term "*seafront*" (which is not a term used in any general Act) is not defined, and this has led to difficulties; in other cases it is defined as "any promenade or esplanade adjacent to the seashore and any pleasure ground maintained by the local authority within [a specified distance] from the seashore." Other provisions in local Acts entirely prohibit the delivery of public speeches, etc., on promenades, etc., without the consent of the council (*c*). [875]

**London. Thames Embankments.**—The Victoria, Albert and Chelsea Embankments were constructed under the Metropolitan Board of

(*p*) Advertisements Regulation Acts, 1907, s. 2; 1925, s. 2; 18 Statutes 908, 1114.

(*q*) 18 Statutes 1113.

(*r*) See e.g. s. 178 of Bridlington Corp. Act, 1933 (23 & 24 Geo. 5, c. lxxiii.).

(*s*) 18 Statutes 940.

(*t*) 12 Statutes 913.

(*u*) 19 Statutes 43.

(*a*) *Ibid.*, 38.

(*b*) 8 Statutes 1170.

(*c*) See e.g. Bridlington Corp. Act, 1933 (23 & 24 Geo. 5, c. lxxiii.), s. 55, and M. of H. Provisional Order Confirmation (Paignton) Act, 1932 (22 & 23 Geo. 5, c. lvi.).

Works (Thames Embankment) Acts, 1862 to 1873 (*d*) ; Metropolitan Board of Works (Various Powers) Acts, 1875 and 1876 (*e*) ; London Parks and Works Act, 1887 (*f*), and responsibility for their upkeep subsequently devolved on the L.C.C. as the Board's successor. The Council had powers for, *inter alia*, the maintenance and lighting of carriageways, footways and river wall of, and provision of sanitary conveniences and street refuges on, the Victoria Embankment ; maintenance, cleansing and lighting of the wall on the Albert and Chelsea Embankments and adjoining footways and grounds. Section 3 and Sched. I. to the Transfer of Powers (London) Order, 1933 (*g*), made by the Minister of Health under the L.G.A., 1929, transferred from the L.C.C. to the metropolitan borough councils and the common council of the City the duty under the Thames Embankment (North) Act, 1872, and later Acts of maintaining, repairing, cleansing, watering and lighting any footway or roadway forming part of any embankment vested in the L.C.C. ; but the council is still responsible for the maintenance and repair of the embankment wall itself and of any lamp erected thereon.

The Grosvenor Embankment was constructed and is maintained by H.M. Commissioners of Works ; but the maintenance of the embankment wall is the duty of the county council. [876]

*Foreshore of Thames.*—Under the Thames Conservancy Acts, the foreshore of the Thames was vested in the Thames Conservators, with the exception of the foreshore in front of Government property. The rights of the Thames Conservators were, as regards the tidal portion of the river, transferred to the Port of London Authority. See titles THAMES CONSERVATORS and PORT OF LONDON AUTHORITY. [877]

(*d*) The Thames Embankment Act, 1862 (25 & 26 Vict. c. 93) ; The Thames Embankment Act, 1863 (26 & 27 Vict. c. 75) ; The Thames Embankment Amendment Act, 1864 (27 & 28 Vict. c. cxv.) ; The Thames Embankment (Chelsea) Act, 1868 (31 & 32 Vict. c. cxxxv.) ; The Thames Embankment (North) Act, 1872 (35 & 36 Vict. c. lxvi.) ; The Thames Embankment (South) Act, 1873 (36 & 37 Vict. c. vii.).

(*e*) 38 & 39 Vict. c. clxxix ; 39 & 40 Vict. c. lxxix.

(*f*) 12 Statutes 380.

(*g*) S.R. & O., 1933, No. 114 ; 26 Statutes 613.

## ESTIMATED POPULATION

*See CENSUS.*

## ESTIMATES

*See BUDGETARY CONTROL ; RATE ESTIMATES.*

## EXCEPTIONAL AREAS

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*See also titles :*

AREAS OF LOCAL GOVERNMENT ;  
CINQUE PORTS ;  
CITY OF LONDON ;  
ISLES OF SCILLY ;

LOCAL GOVERNMENT ;  
LONDON ;  
POWERS OF MINISTERS.

**Classes.**—The normal areas of local government are described in the title AREAS OF LOCAL GOVERNMENT at pp. 404—429 of Vol. I. In earlier days many such areas had, however, some exceptional feature linked to them. Thus a borough, urban district, rural district or parish might run into two or more counties, or a parish might not wholly be comprised within one borough or sanitary district. In addition, a borough council might not be the sanitary authority for the borough, or act for a portion only of it, because the area for which the borough council did not act had been included in an urban district for which a local board or improvement commissioners were the sanitary authority. The position on this point existing at the passing of the P.H.A., 1875, is described in sect. 6 of that Act (*a*).

Very many detached parts of counties, boroughs or sanitary districts also existed, as well as detached parts of parishes. **【878】**

**Areas in more than One County.**—Boroughs and urban districts in more than one county were dealt with by sect. 50 (1) (b) of the L.G.A., 1888 (*b*), and the whole of the borough or urban district was brought within the county which contained the largest portion of its population according to the census of 1881. Rural districts and parishes in more than one county were dealt with in sect. 36 of the L.G.A., 1894 (*c*), by enabling a joint committee appointed by the county councils concerned to make an order that the whole of the rural district or parish should be in the same county. But as regards rural districts, the section allowed the joint committee for special reasons to maintain the position then existing, and it thus came about that several rural districts could, until quite recently, be found, which ran into more than one county.

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(*a*) 18 Statutes 628. Nearly the whole of the section is repealed by L.G.A., 1933.

(*b*) 10 Statutes 728.

(*c*) *Ibid.*, 800.

Alternatively, if sect. 24 (5) of the L.G.A., 1894 (*d*), were allowed to operate, each part of the rural district in a separate county became a separate rural district, but even then the L.G.B. could order the affairs of one district to be "temporarily administered" by the council of the other district. [879]

**Parishes not Comprised in One Borough or Urban District.**—A parish situate in more than one urban district (*e*) was divided by sect. 36 (2) of the Act of 1894 (*f*), and the parts of the parish in each such district were constituted separate parishes, again unless the county council for special reasons otherwise directed. Several parishes not wholly comprised in one borough or urban district persisted, but the last example was the parish of Chatham which was partly in the borough of Chatham and partly in the city of Rochester. By the Kent Review Order, 1934, a parish of Rochester was formed co-extensive with the city of Rochester, and the parish of Chatham was made co-extensive with the borough of Chatham. [880]

**Boroughs for which Council were not Sanitary Authority for whole Borough.**—All these were dealt with by provisional orders made under sect. 52 of L.G.A., 1888 (*g*), and all the orders were confirmed by Act, except the order dealing with Folkestone and Sandgate, which was rejected by a Parliamentary committee on opposition to it. Thus it came about that until most of the Sandgate urban district was added to the borough of Folkestone by the Kent Review Order, 1934, the Sandgate U.D.C. were the sanitary authority for a small part of the borough of Folkestone, and the council of that borough were not masters in the whole of their house. [881]

**Detached Areas.**—Detached parts of counties or boroughs have been reduced in number by provisional orders altering county or borough boundaries. A vast number of detached parts of parishes have also been abolished either by order under sect. 1 of the Divided Parishes and Poor Law Amendment Act, 1876 (*h*), or by the operation of sect. 2 of the amending Act of 1882 (*i*). It will be seen from the census of 1931 (*k*) that a goodly number then remained, but these will no doubt be abolished by the county review orders. [882]

**Extra-Parochial Places.**—Another class of exceptional area is the extra-parochial place. Originally these comprised Royal palaces and castles, cathedrals and their precincts, the four Inns of Court, and other areas in which the incumbent had no jurisdiction because a Royal chaplain or other special ecclesiastical officer acted for it. Some of the islands off England or Wales were also extra-parochial.

By sect. 1 of the Extra-Parochial Places Act, 1857 (*l*), overseers were to be appointed for all places entered as extra-parochial in the census of 1851, and if overseers were appointed they thus became civil parishes. If this enactment had not been acted on, any place reputed

(*d*) 10 Statutes 793.

(*e*) This term includes a borough when used in Acts prior to the L.G.A., 1933; see s. 21 of the Act (10 Statutes 792).

(*f*) 10 Statutes 800.

(*g*) *Ibid.*, 729. A list of the fourteen boroughs to which s. 52 applied is given on p. 803 of Lumley's Public Health, 10th ed.

(*h*) 10 Statutes 568.

(*i*) *Ibid.*, 672.

(*k*) The volume for each county contains a list of detached parts of parishes (usually in Table 5), with the area and population of each.

(*l*) 12 Statutes 936.

to be extra-parochial, whether entered by name in the census of 1851 or not, was by sect. 27 of the Poor Law Amendment Act, 1868 (*m*), annexed to the adjoining parish with which it had the longest common boundary, if an overseer for the place had not been appointed, or no overseer was acting for it on December 25, 1868.

The Crown was not bound by these enactments, with the result that the portions of Windsor Castle occupied by the Sovereign are still extra-parochial; the Tower of London was also extra-parochial until it was included in the metropolitan borough and parish of Stepney under the London Government Act, 1899 (*n*).

Certain islands for which no appointment of overseers was made under sect. 1 of the Extra-Parochial Places Act, 1857 (*o*), also remain extra-parochial, because there was no parish adjoining to which they could be annexed by sect. 27 of the Poor Law Amendment Act, 1868 (*p*). Of these, Lundy Island, Bardsey Island, Puffin Island and the Farne Islands may be mentioned. [883]

**Isles of Scilly.**—These isles form an exceptional area because they are governed by a council exercising some of the functions of a county council and some of those of an R.D.C. This council was constituted by provisional order (*q*) of the Local Government Board made under sect. 49 of L.G.A., 1888 (*r*), and it is often necessary to adapt a new Act to fit the system of local government in the Isles. See title ISLES OF SCILLY. [884]

**Prisons and Assize Courts.**—In some instances, certain buildings belonging to the county at large and used as prisons or assize courts are locally situate within a city or borough. Examples are found at Bristol, Exeter, Newcastle upon Tyne and Norwich, and a local Act usually provides that these buildings should be deemed to form part of the county at large, but does not include them within any parish of the county, and they therefore form a class of exceptional area. [885]

**Application of Acts to Exceptional Areas.**—The question of the powers of Ministers to adapt statutes by orders has always been subject to criticism and evokes discussion in Parliament whenever it is sought to give them (*s*). Such powers are usually given “to remove difficulties,” as exceptional areas do not fit in with the general definitions in the statute and are considered of too small importance to be dealt with separately in the Act. Safeguards are inserted as shown below as to the examination by Parliament of the order, and the time is limited in which the Minister may make such an order. A precedent can be found as early as sect. 6 (3) of the Agricultural Rates Act, 1896 (*t*), which allowed the Local Government Board by regulations to adapt the Act to cases where there was no valuation list or where a sum was raised by rate from an area not a parish. [886]

(*m*) 10 Statutes 558.

(*n*) See also *post*, p. 390, as to the Tower and other extra-parochial places in London.

(*o*) 12 Statutes 936.

(*p*) 10 Statutes 558.

(*q*) Confirmed by 53 & 54 Vict. c. cixxvi.

(*r*) 10 Statutes 727.

(*s*) See *The New Despotism*, by the Rt. Hon. Lord Hewart of Bury, 1929, Chapter X. on “Examples from Statutes.”

(*t*) Repealed by L.G.A., 1929.

*R. & V.A.*, 1925.—The areas that are to be rating areas are defined in sects. 1 and 68 of this Act (*u*). By sect. 67 (a) the M. of H. was given power (now expired) by order to remove difficulties, and one such difficulty which it was foreseen might arise was in connection with the application of the Act to any exceptional area. By sub-sect. (3) of that section an “exceptional area” included any non-county borough or district which extended into two or more counties or was administered by the council of another district, and any parish which extended into two or more counties or non-county boroughs or districts, or which was not within the same district for municipal and sanitary purposes. The Minister was to be permitted in such a case to remove the difficulty by order, which might modify the provisions of the Act as far as the Minister thought it necessary or expedient. These powers were not, however, to be exercised after March 31, 1929, and the order was to be laid before both Houses of Parliament forthwith. If an address was presented to His Majesty by either House within the next subsequent twenty-eight days on which the House sat, praying that it be annulled, the order was to be void. This, however, was to be without prejudice to the validity of anything previously done under it or the making of a new order. This is the same procedure as is applied in sect. 66 (b) of the Act to orders adapting local Acts and in sect. 58 (c) to the making of rules.

In a case (*d*) that followed in 1927 in regard to a scheme under sect. 16 of the Act for the constitution of assessment areas, Lord HEWART said: “This, I think, though I say it with some hesitation, may be regarded as indicating the high-water mark of legislative provisions of this character. It is obvious that if this Court had taken another view of the case presented to us to-day and had decided to quash this order as having been made *ultra vires*, the Minister might to-morrow, under the provisions of sect. 67, have arrived at the same end by making an order and removing the difficulty.” [886A]

*L.G.A.*, 1929.—Sect. 130 of this Act (*e*) is somewhat similar to sect. 67 of the *R. & V.A.*, 1925 (*f*), and gives the M. of H. power to remove difficulties arising in applying the Act to any “exceptional area,” by which he might remove the difficulty as he might judge necessary and modify the provisions of the Act so far as he considered necessary for carrying the order into effect (*g*).

The expression “exceptional area” as defined in sect. 130 (3) of this Act included any poor law area which was not wholly comprised within one county or county borough, and any area which enjoyed or was subject to any special privilege, exemption or liability in respect of rating or valuation, in addition to the areas referred to in sect. 67 (3) of the Act of 1925. It was provided that the Minister should not exercise the power conferred by sect. 130 after December 31, 1930. The orders made were to come into operation upon the date specified therein, but were to cease to have effect upon the expiration of three months from the date specified, unless they had previously been approved by a resolution passed by each House of Parliament. The

(*u*) 14 Statutes 617, 686.

(*a*) *Ibid.*, 686.

(*b*) *Ibid.*, 685.

(*c*) *Ibid.*, 679.

(*d*) *R. v. M. of H., Ex parte Wortley R.D.C.*, [1927] 2 K. B. 229, at p. 236; 38 Digest 579, 1146.

(*e*) 10 Statutes 969.

(*f*) 14 Statutes 686.

(*g*) For Lord Hewart’s opinion of s. 130, see *The New Despotism*, at pp. 53—58.

period of three months was not to include any time during which Parliament was dissolved or prorogued, or during which both Houses were adjourned for more than four days. [887]

*L.G.A.*, 1933.—It will have been seen that most of the exceptional areas which used to vex the souls of the Government draftsmen have ceased to exist. When the Bill for the Act of 1933 was prepared, the only instances in which it was found necessary to obtain a power of adapting the Act by order of the M. of H. to suit exceptional areas were dealt with by sects. 292, 293 of the Act (*h*), which relate respectively to the Isles of Scilly and joint boards or joint committees formed by provisional order or order.

The case of a rural district in more than one county was dealt with in sects. 41, 141 (8) of the Act (*i*) by providing that a joint committee of the county councils should act. A special power was inserted enabling the Minister by order made on the joint representation of the county councils concerned to alter a borough or district not situate in one county, or a detached part of a county (*k*).

None of these orders under the *L.G.A.*, 1933, need be laid before Parliament, but the power in sect. 293 of adapting the Act to joint boards or joint committees formed by provisional order may only be exercised by departmental order, if the order is made before May 31, 1936, and on the application of the joint board or committee. Otherwise a provisional order confirmed by Act is necessary (*l*). [888]

**London.**—The City of London forms an exceptional area, as it is not a borough to which the Municipal Corporations Act, 1882, or the *L.G.A.*, 1933, applies, and the corporation is in much the same position as municipal corporations occupied before municipal government was reformed by the Municipal Corporations Act, 1835.

Some detached parts of parishes in London, situate locally either inside or outside London, used to exist, but were dealt with by Order in Council under sect. 18 of the London Government Act, 1899 (*m*).

Eight extra-parochial places in London are mentioned in Schedule C to the Metropolis Management Act, 1855 (*n*), viz. the Charterhouse, Inner Temple, Middle Temple, Lincoln's Inn, Gray's Inn, Staple Inn, Furnival's Inn and the Close of the Collegiate Church of St. Peter (*o*). The Tower of London is not named in the Schedule, but, as already mentioned (*p*), now forms part of the metropolitan borough and parish of Stepney.

An overseer was appointed for the Charterhouse under sect. 1 of the Extra-Parochial Places Act, 1857 (*q*). It thus became a parish, and now forms part of the metropolitan borough and parish of Finsbury. Similarly Staple Inn and Furnival's Inn are included within the metropolitan borough and parish of Holborn, and the Close of Westminster Abbey forms part of the City of Westminster and the parish of the City of Westminster. [889]

As to the four Inns of Court, the Under-Treasurers of the Inner Temple, Middle Temple and Gray's Inn acted as overseers for each of their Inns under sect. 3 of the Extra-Parochial Places Act, 1857 (*r*).

(*h*) 26 Statutes 460, 461.

(*i*) *Ibid.*, 325, 382.

(*k*) *L.G.A.*, 1933, s. 143; 26 Statutes 382.

(*n*) *Ibid.*, 950.

(*l*) *Ibid.*, s. 293 (2), proviso; 26 Statutes 461.

(*p*) See *ante*, p. 388.

(*m*) 11 Statutes 1235.

(*r*) *Ibid.*, 937.

(*o*) *I.e.* Westminster Abbey.

(*q*) 12 Statutes 936

The steward of Lincoln's Inn was made the overseer of the Inn by a local Act of George the Fourth (*s*). Gray's Inn and Lincoln's Inn were included as separate parishes in the metropolitan borough of Holborn, when that borough was constituted in 1900, and the borough council became the overseers of both Inns under sect. 11 of the Act of 1899 (*t*). On March 31, 1932, the two Inns were added to the parish of Holborn by sect. 26 of the L.C.C. (General Powers) Act, 1931 (*u*).

The Inner and Middle Temples could not, however, be dealt with under the London Government Act, 1899, because sect. 22 (*x*) provided that for the purposes of that Act they should be deemed to be within the City of London, but as they have overseers they are technically civil parishes. Apparently they are the last areas in England and Wales for which an individual acts as overseer. Moreover, although the Holborn borough council are the sanitary authority under the P.H. (London) Act, 1891, for Gray's Inn and Lincoln's Inn, the overseers of the Inner Temple and the Middle Temple are under sect. 99 (1) (e) of that Act (*a*), the sanitary authority for the execution of that Act in the Temples.

To sum up, the City of London and the Inner and Middle Temple are exceptional areas in London for which special provision may be necessary in a statute. (See also titles LONDON and CITY OF LONDON.)

[890]

(*s*) 10 Geo. 4, c. xxxii. See also 10 & 11 Vict. c. ccxi. Both Acts were repealed by the Borough of Holborn Lincoln's Inn Scheme, 1901; S.R. & O., 1901, No. 262.

(*t*) 11 Statutes 1232.

(*x*) 11 Statutes 1237.

(*u*) 24 Statutes 274.

(*a*) *Ibid.*, 1080.

## EXCESSIVE EXERCISE OF POWERS

*See ULTRA VIRES.*

## EXCHEQUER GRANTS

*See GENERAL EXCHEQUER GRANTS.*

## EXCISE LICENCES

*See LOCAL TAXATION LICENCES.*

## EXPLOSIVES

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*See also title : REGULATED INDUSTRIES.*

For Calcium Carbide, *see title* CARBIDE OF CALCIUM.

For Celluloid, *see title* CINEMATOGRAPHS.

For Petroleum, *see title* PETROLEUM.

**Introductory.**—The Explosives Act, 1875 (*a*), is the statute which regulates the manufacture, storage, sale, conveyance and importation of explosives for legitimate purposes. Local authorities have certain functions under the Act, and it is therefore proposed to give a brief outline of its provisions and of the duties imposed. The subject is complex and technical, and persons engaged in carrying the statute into operation should avail themselves of the admirable handbook issued by the H.O., and of the official summaries, issued from H.M. Stationery Office, of the principal points to be attended to when inspections are made of small firework factories, explosives stores and registered premises. It must be remembered that the Act itself has at different dates been amended by Orders in Council and supplemented by orders of the Home Secretary (*b*). [891]

**Local Authorities.**—Outside London, the local authorities are : (1) in any harbour, the harbour authority as defined in sect. 108 of the Act (*c*) ; (2) in county boroughs, and in quarter sessions boroughs existing as such in August, 1888, with a population according to the census of 1881 of 10,000 or upwards, the council (*d*) ; (3) boroughs, and urban districts under an Improvement Act, whose councils have been declared under sect. 68 to be explosives authorities ; and (4)

(*a*) 8 Statutes 385.

(*b*) For list of both these classes of orders, see 8 Statutes 384, to which may be added an Order in Council of 21/12/1928, as to liquid oxygen ; S.R. & O., 1928, No. 1045.

(*c*) 8 Statutes 440.

(*d*) S. 67 (8 Statutes 424) as amended by ss. 34—39 of L.G.A., 1888 ; 10 Statutes 711—717.

elsewhere, the county council (*e*). But county councils may delegate their powers to (i.) a committee of their own body, or (ii.) a borough or district council, or (iii.) the county justices in petty sessions (*f*). Councils of boroughs may also delegate their powers to a committee (*g*). H.M. Inspectors have intimated that delegation of powers under the Explosives Acts to numerous smaller local authorities is undesirable and unlikely to secure efficiency.

It is believed that no council has been constituted a local authority under sect. 68 of the Act of 1875 since 1888. [892]

**Duties and Powers of Local Authorities.**—It is the duty of every local authority to carry into effect within their jurisdiction the powers vested in them under the Act (*h*).

A harbour authority and a canal company may make provision for the conveyance, loading and unloading of explosives within their jurisdiction, charging a reasonable sum for services rendered (*i*). Subject to the grant of a licence by the Home Secretary, any local authority may, in the interests of public safety, provide magazines either within or without their jurisdiction for the storage of explosives, and may make a reasonable charge for the use thereof by individuals (*k*).

The duties of a local authority include also the licensing of small firework factories (*l*), the licensing of stores for gunpowder and other explosives (*m*) ; and the registration of premises (*n*).

A local authority have no power to refuse a licence for a small firework factory or an explosives store, if the requirements of the Act and Orders in Council have been complied with, but it is incumbent on the authority before granting a licence to satisfy themselves that such is the case. Small firework factories must not be confused with "toy firework factories," which are licensed, on specially easy conditions, by the Secretary of State. Toy fireworks include amores, throwdowns, and crackshots. [893]

**Officers of Local Authorities.**—A power to appoint officers was to be inferred from the terms of sects. 69, 70 of the Act (*o*), but appointments could now be made under sect. 105 or sect. 106 of L.G.A., 1933 (*p*). For the discharge of the duties of the local authority, the officers appointed usually are, and should be, designated as "superior officers" so that they may have the full powers of inspection, seizure and search which are conferred on "superior officers" by sect. 75 as well as the more limited powers conferred on "officers" by sects. 73, 74 of the Act (*q*).

The principal duties of officers are: to report on the site and construction of stores for explosives and small firework factories when

(*e*) S. 67 (8 Statutes 424), as amended by ss. 3, 7, 38, 39 of L.G.A., 1888 ; 10 Statutes 688, 691, 716, 717.

(*f*) L.G.A., 1888, s. 28 (2) (10 Statutes 707) ; as in part repealed by L.G.A., 1933. L.G.A., 1933, ss. 85, 274 ; 26 Statutes 352, 451.

(*g*) L.G.A., 1933, s. 85 ; 26 Statutes 352.

(*h*) Act of 1875, s. 69 ; 8 Statutes 425.

(*i*) S. 71.

(*k*) S. 72.

(*l*) S. 49. Small firework factories are defined in s. 48 ; 8 Statutes 415.

(*m*) Ss. 15, 39 ; *ibid.*, 396, 409.

(*n*) Ss. 21, 39 ; *ibid.*, 399, 409.

(*o*) 8 Statutes 425.

(*p*) 26 Statutes 361.

(*q*) 8 Statutes 427—429.

a licence is applied for under sect. 15 or sect. 49 of the Act (*r*) ; to inspect under sect. 69 of the Act (*s*) small firework factories, stores, registered premises and toy firework factories ; to enforce the provisions relating to conveyance, sale and keeping for private use ; to prevent the manufacture of explosives in unauthorised places ; and generally to enter premises and inspect methods of storage (*t*).

To prevent the discharge of fireworks in streets or other public places under sect. 80 of the Act (*u*) is rather the duty of the police. See title FIREWORKS AND FIREARMS. [894]

**Acquisition of Land and Borrowing for Magazines.**—Sect. 72 of the Act (*a*) originally gave a local authority power to acquire or appropriate land for the erection of a magazine, and of borrowing for the acquisition of land for this purpose, or of acquiring or building a magazine. Where the local authority are a harbour authority, the approval of the Board of Trade is necessary to the loan. Portions of sect. 72 are repealed by the L.G.A., 1933, except as to harbour authorities and London, because land would now be acquired by agreement by a county council or borough council, for a magazine, under the general provision in sect. 157 of the L.G.A., 1933 (*b*), or appropriated under sect. 163 of that Act (*c*), subject to the approval of the M. of H. Naturally a power of purchasing land for this purpose compulsorily was not given by sect. 72 of the Act of 1875, and cannot be exercised under the Act of 1933.

Similarly, money would be borrowed, for the purposes of a magazine, by a county or borough council under sect. 195 of the L.G.A., 1933 (*d*). The sanctioning authority would be the M. of H.; see the definition in sect. 218 of the Act (*e*). [895]

**Expenses of Local Authority.**—Under sect. 70 of the Act of 1875 (*f*), expenses incurred by a local authority, including the salaries and expenses of officers, are to be paid out of the local rate. As respects a harbour authority, the local rate means any moneys, fund or rate applicable or leviable by that authority for any harbour purposes. In a borough, the local rate was the borough fund or borough rate, but for this the general rate fund has been substituted (*g*). Apparently the expenses of a county council as local authority should be defrayed as expenses for special county purposes from which boroughs whose councils are local authorities will be exempt (*h*). This result probably follows from sect. 35 (2) of L.G.A., 1888 (*i*), because a borough council only became the local authority under sect. 67 of the Explosives Act, 1875 (*k*), if the borough was not assessed to the county rate by the county justices, and the borough thus satisfied the terms of sect. 35 (2) of the Act of 1888, as being exempt from contributing towards costs incurred for a purpose for which the county quarter sessions were authorised to incur costs. The expenses of the justices in petty sessions as local authority were by sect. 70 of the Act of 1875 (*l*), to be defrayed from the county rate. [896]

(*r*) 8 Statutes 396, 416.

(*s*) *Ibid.*, 425.

(*t*) Ss. 73—75 ; 8 Statutes 427—429.

(*u*) 8 Statutes 431.

(*a*) *Ibid.*, 426.

(*b*) 26 Statutes 391.

(*c*) *Ibid.*, 396.

(*d*) *Ibid.*, 412.

(*e*) *Ibid.*, 424.

(*f*) 8 Statutes 425.

(*g*) See L.G.A., 1933, s. 185 ; 26 Statutes 407.

(*i*) 10 Statutes 714.

(*h*) See *ibid.*, ss. 180, 181 ; *ibid.*, 404, 405.

(*l*) *Ibid.*, 425.

(*k*) 8 Statutes 424.

**Definition of "Explosive."**—“Explosive,” as defined in sect. 3 of the Act (*m*) :

- (1) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and
- (2) includes fog signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

This definition may be extended by Order in Council under sect. 104 of the Act (*n*) so as to include other explosive substances, to which the provisions of the Act will then apply subject to such exceptions, limitations, and restrictions as may be specified in the order. Such orders have been made in the case of picric acid, picrates, di-nitro-phenol and acetylene.

The provisions of Part I. of the Act in terms apply only to gunpowder, but are made applicable (subject to certain provisions) to other explosives by sect. 39 (*o*). [897]

**Manufacture.**—Subject to certain exceptions, explosives may not be manufactured, nor may any process of manufacture be carried on, except in authorised factories (*p*); and the process of dividing up into its component parts, or otherwise breaking up or unmaking any explosive, or making fit for use any damaged explosive, or re-making, altering or repairing any explosive is to be deemed a manufacture of it (*q*).

The chief exceptions above referred to are the making of a small quantity of explosive for the purpose of chemical experiment and not for practical use or for sale (*p*), the filling of safety cartridges (*r*) up to a certain number for private use (*s*), the filling (subject to certain conditions) of cartridges for small arms in a room used in connection with a magazine, store or registered premises (*t*), the filling of blasting cartridges for use in mining or quarrying and certain other work in a workshop used in connection with a magazine or store (*u*), and Government manufactories (*a*). [898]

**Storage.**—The storage of explosives so as to be a cause of danger to the public is a common-law nuisance (*b*). In addition the Act of 1875 provides that, subject to certain exceptions, explosives may not be kept at any place except (1) authorised factories; (2) authorised magazines or stores; (3) premises registered for the purpose; and (4) small firework factories (*c*).

Amounts not exceeding 30 lb. kept for private use and not for sale, and explosives kept by a carrier or other person for the purpose of conveyance in accordance with the provisions of the Act, are also excepted (*c*). [899]

(*m*) 8 Statutes 385.

(*n*) *Ibid.*, 409.

(*o*) S. 105; 8 Statutes 439.

(*p*) S. 41; *ibid.*, 412.

(*q*) S. 47; *ibid.*, 414.

(*b*) *R. v. Chilworth Gunpowder Co., Ltd.* (1888), 4 T. L. R. 557; 36 Digest 192,

331.

(*c*) *Ibid.*, ss. 5, 48; 8 Statutes 386, 415.

(*n*) *Ibid.*, 439.

(*p*) S. 4; 8 Statutes 385.

(*r*) Defined in s. 108; *ibid.*, 440.

(*t*) S. 46; *ibid.*, 413.

(*a*) S. 97; *ibid.*, 436.

**Authorised Factories and Magazines.**—These may be either new factories or magazines, or factories or magazines lawfully existing in 1875. In the case of a new factory or magazine a licence must be obtained from the Home Secretary, who may reject the application, or, if he is disposed to grant it, will give the applicant permission to apply to the local authority for their assent to the establishment of the factory or magazine on the proposed site (*d*). The local authority may refuse their assent or may impose certain conditions (*e*), but an appeal lies from their decision to the Home Secretary, who may overrule it (*f*). If, however, they agree to the application, the Home Secretary must grant a licence.

The regulation of factories and magazines is supervised by H.M. Inspectors of Explosives. [900]

**Small Firework Factories.**—The occupier of a “ small firework factory ” does not need a factory or magazine licence from the Home Secretary (*g*) if he obtains a small firework factory licence from the local authority, so long as he merely manufactures an explosive (other than nitro-glycerine or any prescribed explosive) for the purpose only of the manufacture of coloured fires or fireworks in accordance with the Act, and does not sell the same except in the form of manufactured fireworks or of coloured fires packed in accordance with the Act (*g*). A factory is not to be deemed a small firework factory if there is upon it at the same time (1) more than 100 lb. of any explosive other than manufactured fireworks and coloured fires and stars ; or (2) more than 500 lb. of manufactured fireworks, either finished or partly finished ; or (3) more than 25 lb. of coloured fires or stars, not made up into manufactured fireworks (*h*). [901]

**Authorised Stores.**—Any person may apply to the local authority for a licence to keep an explosives store. It then becomes the duty of the authority to see whether the proposed store satisfies the requirements of the various Orders in Council ; and, if it does so, it is incumbent on them to grant the desired licence upon payment by the applicant of the prescribed fee (*i*). Such a licence is not transferable and must be renewed annually (*k*). Provision was made for stores existing in 1875 which might be carried on by virtue of a “ continuing certificate ” granted by the local authority, such certificate being equivalent to a licence (*l*). Detailed rules are laid down in sect. 17 of the Act (*m*) for the regulation of stores. [902]

**Registered Premises.**—Any person desirous of so doing may register with the local authority any premises for the keeping of explosives (*n*). The registration must be renewed annually, and the provisions limiting the amount to be kept on the premises, and imposing other requirements, must be complied with (*o*).

The principal regulations as to the keeping of explosives on registered premises (*p*) include the following : (i.) No explosive other than gunpowder and cartridges made therewith, small-arm nitro-compound,

(*d*) S. 6 ; 8 Statutes 387.

(*e*) S. 7 ; *ibid.*, 388.

(*f*) S. 8 ; *ibid.*, 389.

(*g*) S. 48 ; *ibid.*, 415.

(*h*) *Ibid.*

(*i*) S. 15 ; 8 Statutes 396.

(*k*) S. 18 ; *ibid.*, 397.

(*l*) S. 20 ; *ibid.*, 398.

(*m*) S. 17 ; *ibid.*, 396.

(*n*) S. 21 ; *ibid.*, 399.

(*o*) These regulations are made by Orders in Council in pursuance of s. 40 (2).

(*p*) Order in Council of October 26, 1896 ; S.R. & O., 1896, No. 964.

safety cartridges, percussion caps, safety fuses and fireworks, may be kept without a certificate from the chief officer of police. (ii.) Explosives must be kept in a special building of substantial construction, or in a fireproof safe, or in a substantial closed receptacle such as a metal or wooden box, or cupboard or drawer. A glass show-case is sufficient for "shop goods" (fireworks), but it must not be in the window of a shop. (iii.) The amount of explosive which may be kept is limited according to a schedule, and varies according to the nature of the explosives and the mode in which they are kept. (iv.) Explosives in different groups must be in separate receptacles, e.g. safety cartridges may not be kept in a receptacle with gunpowder or nitro-compound. (v.) All due precautions must be taken to prevent accidents by fire or explosion; and special rules apply to the keeping of dynamite and gun-cotton, to the opening of packages of explosives other than fireworks and safety cartridges, to rooms used for the filling of small-arm cartridges, and other matters.

The annual fee for each registration may not exceed one shilling (*q*). The H.O. advise that every person registering premises be provided by the local authority with a printed summary of the appropriate provisions of the Act. Such a summary is often conveniently printed on the back of the receipt for the registration fee. [903]

**Sale.**—Explosives may not be hawked, sold or exposed for sale upon any highway, street, public thoroughfare or public place (*r*); nor sold to any child apparently under the age of thirteen years (*s*). All explosive exceeding 1 lb. in weight when publicly exposed for sale or sold must be in a substantial receptacle, closed and labelled (*t*), an exception being made by Order in Council (*u*), in favour of safety cartridges, safety fuse for blasting, railway fog signals, percussion caps and manufactured fireworks. A substantial receptacle is necessary for cartridges, etc., containing more than 5 lb. of explosive and for fireworks of which the gross weight exceeds 5 lb. [904]

**Conveyance.**—The general rules regulating packing for conveyance are to be found in certain orders of the Home Secretary (*a*). In addition to these general rules, harbour authorities, and railway and canal companies, must (subject to the approval of the M. of Transport) make bye-laws as to the conveyance, loading, etc., of gunpowder (*b*); and the occupier of any wharf or dock may, and if required to do so must, with the approval of the Home Secretary, make similar bye-laws (*c*). The Home Secretary has also made bye-laws to cover cases not otherwise provided for, e.g. the conveyance of gunpowder by road (*d*). [905]

**Importation.**—It is an offence to import into the United Kingdom, without an importation licence from the Home Secretary, dynamite or gun-cotton or any explosive other than gunpowder, safety cartridges, percussion caps, fog signals and safety fuses for blasting (*e*). [906]

**Specially Dangerous Explosives.**—The Crown may by Order in Council prohibit, either absolutely or subject to conditions, the

(*q*) S. 21; 8 Statutes 399.

(*r*) S. 30; *ibid.*, 403.

(*s*) S. 31; *ibid.*, 403.

(*t*) S. 32; *ibid.*, 403.

(*u*) Made under last para. of s. 50 (8 Statutes 416).

(*a*) Orders of June 10, 1904, March 18, 1911, and November 7, 1922, S.R. & O., 1904, No. 1221; 1911, No. 317; 1922, No. 1240.

(*b*) Ss. 34, 35; 8 Statutes 404, 406.

(*c*) S. 36; *ibid.*, 407.

(*d*) S. 37; *ibid.*, 408; Order of Sept. 20, 1924 (S.R. & O., 1924, No. 1129).

(*e*) S. 40 (9); *ibid.*, 411.

manufacture, keeping, importation, conveyance or sale of any specially dangerous explosive, but no such order can absolutely prohibit anything which may lawfully be done under the Act in pursuance of a "continuing certificate." (f). [907]

**Offences and Penalties.**—Special penalties are provided, under various sections, for particular offences. The offence in respect of which prosecutions by a local authority are most commonly instituted is that of keeping fireworks or other explosives in a manner which does not conform with the general rules laid down in the principal Act (g). For such an offence the penalty specified in sect. 22 was forfeiture of the explosive and a penalty not exceeding two shillings for every pound of explosive improperly kept, but by sect. 3 of the Explosives Act, 1923 (h), the maximum fine is now £100 or the fine allowed by sect. 22, whichever is greater. A person accused of any offence for which the penalty may exceed £100 may elect to be tried on indictment (i). A prosecuting officer, if satisfied with the conduct of the occupier of premises on which explosives are made or kept, and that some other person is the actual offender and would in the event of proceedings be prosecuted by the occupier as such, should proceed in the first instance against the actual offender and not against the occupier (k). [908]

**London.**—The local authorities for the purposes of the Act in London are the Port of London Authority within the area of the Port, and elsewhere the common council of the City of London and the L.C.C. (l). [909]

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(f) S. 43; 8 Statutes 412.

(g) S. 22; *ibid.*, 399.

(h) 8 Statutes 447.

(i) S. 92; 8 Statutes 434.

(k) S. 87.

(l) S. 67; as amended by ss. 40 (8), 41 (1) of L.G.A., 1888 (10 Statutes 719).

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## EXTENSION OF AREA

*See ALTERATION OF AREAS; CHARTERS OF INCORPORATION; COUNTY BOROUGH, CREATION OR ALTERATION OF; COUNTY REVIEW.*

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## EXTRAORDINARY TRAFFIC AND EXCESSIVE WEIGHT

*See UNREASONABLE AND EXCESSIVE USER OF HIGHWAYS.*

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## FABRICS, MISDESCRIPTION OF

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**Introductory.**—The object of the Fabrics (Misdescription) Act, 1913 (*a*), is to make it unlawful for readily inflammable textile fabrics, of which "flannelette" used to be the best-known example, to be sold with a description which denotes or implies that they are not inflammable. The Act applies to fabrics whether in the piece, or made up into garments, or in any other form. The Act does not forbid the sale of inflammable fabrics if no description implying non-inflammability be applied.

Prosecutions under the statute are rare, because it is now unusual for a dealer to apply to textile fabrics a description attributing non-inflammability. [910]

**Offences.**—No person may sell, or expose or have in his possession for sale, any textile fabric to which is attributed the quality of non-inflammability, or safety from fire, or any degree of such quality or safety (whether by wording or marking, or by verbal representation at the time of sale), unless the fabric conforms with the standard prescribed by regulations of the Secretary of State (*b*) made under the Act. These regulations require that, when the fabric is subjected to the prescribed test, it shall not be set alight or that, if it is set alight, it shall burn without a flame or with a flame which dies out without spreading. A fabric found in a person's possession is deemed to be intended for sale unless the contrary is proved (*c*). The penalty on summary conviction is a fine not exceeding £10 for a first offence or not exceeding £50 for a second or subsequent offence (*d*).

A warranty from a person resident in the United Kingdom will exempt a dealer from a fine, but only if he lays information against the warrantor and proves that he himself took reasonable steps to ascertain, and in fact believed in, the accuracy of the statement warranting non-inflammability (*e*). [911]

**Local Authority.**—A definite duty to enforce the Act is imposed by sect. 5 (1) on the appropriate local authority, which (outside London) is the council of a borough or urban district, or, in a rural district, the county council. Any male or female officer of the council, who in practice is often a sanitary inspector or an inspector of weights and measures, may be authorised by them to institute and carry on proceedings in respect of offences (*f*). [912]

(*a*) 18 Statutes 951.

(*b*) See S.R. & O., 1914, No. 48.

(*c*) Act of 1913, s. 4; 18 Statutes 952.

(*d*) *Ibid.*, s. 1; *ibid.*, 951.

(*e*) *Ibid.*, s. 3; *ibid.*

(*f*) *Ibid.*, s. 5 (1); *ibid.*, 952.

**Expenses.**—Expenses incurred under the Act of 1913 by a borough council or U.D.C. will be defrayed from the general rate fund under sects. 185, 188 of the L.G.A., 1933 (g), those portions of sect. 5 (3) of the Act of 1913 which dealt with the expenses of borough and district councils having been repealed by the Act of 1933. The expenses incurred by a county council are by sect. 5 (3) to be defrayed as expenses for special county purposes, from which it follows that boroughs and urban districts will be exempt from contributing to expenses of the county council. [918]

**London.**—By sect. 5 (2) of the Act (h), “local authority” means, as respects the City of London, the Common Council; elsewhere in London, the county council, but that council may, with the approval of the Secretary of State, make arrangements with any metropolitan borough council to act as their agents in the exercise of powers under the Act, and the borough council may undertake to pay the whole or any part of the expenses incurred in the exercise of the delegated powers.

In London, practically no work now arises under the Act since inflammable textile fabrics are not in general use.

By sect. 5 (3) of the Act (h), the expenses incurred by the common council are to be defrayed from the general rate of the City of London, and the expenses of the L.C.C. as expenses for special county purposes, from which the City of London would be exempt. The expenses of a metropolitan borough council are to be defrayed as part of their expenses, that is to say from the general rate of the borough, but apparently this requirement would relate only to expenses which the borough council had agreed to defray, because on general principles the expenses of a borough council acting as agents of the L.C.C. would be defrayed by the L.C.C. as principal. [914]

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(g) 26 Statutes 407, 408.

(h) 13 Statutes 952.

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# FACTORIES AND WORKSHOPS

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*See also titles :*

BAKEHOUSES ;  
DERATING ;  
FACTORY INSPECTOR ;  
HOME OFFICE ;  
HOME WORK ;

LAUNDRIES ;  
REGULATED INDUSTRIES ;  
SECRETARY OF STATE ;  
SMOKE ABATEMENT ;  
STEAM WHISTLES.

[NOTE.—The local authorities with functions under the Factory and Workshop Act, 1901 (*a*), which in this title is usually referred to as "the Act of 1901," are the councils of county and non-county boroughs, urban districts and rural districts—see sects. 21, 35 of the L.G.A., 1894 (*b*), and sect. 154 of the Act of 1901 (*c*). But the term "district council," when used as extending to all these bodies, is apt to mislead, and it has been considered preferable in this title to refer to "the council" instead of "the district council."]

Nearly all the enactments cited are contained in the Factory and Workshop Act, 1901, and it seems unnecessary to insert references to Halsbury's Statutes of England, additional to those already given.]

[915]

(a) 8 Statutes 517—607. (b) 10 Statutes 792, 799. (c) 8 Statutes 597.

### INTRODUCTORY

This article is intended to deal only with those matters relating to factories, workshops and workplaces, in regard to which local authorities have powers or duties. The powers and duties of the Home Secretary and of inspectors of factories are outside the scope of a work on Local Government Law, and the matters with which they are concerned are excluded, except in so far as they also concern local authorities.

The law here treated is to be found in the Factory and Workshop Act, 1901, and in those parts of the P.H.A., 1875 (*d*), and of the P.H.A. Amendment Act, 1890 (*e*), which are applied by that Act. The definitions of the various classes of factory and workshop are complex, and it has been thought advisable to refer to these at an early stage of this article. The specific provisions enforceable by local authorities with respect to these premises are next considered; and after that, the means of enforcing them, including the procedure available upon the default of a local authority.

The enactments which deal with Bakehouses, Homework and Laundries will be found under these respective titles in other parts of this work. [916]

**Matters with which Local Authorities are Concerned.**—The Act of 1901 contains provisions regulating numerous matters connected with factories, workshops, etc.; and makes breaches of these provisions punishable, some under the Act itself and some under the law relating to public health. For instance, offences against sect. 1, for the prevention of uncleanliness and overcrowding in factories (other than domestic factories) are made punishable under that Act; but by sect. 2 similar offences in workshops and domestic factories are to be punishable under the law relating to public health. It does not appear that the Legislature intended local authorities to deal with matters in general, in regard to which offences are punishable only under the Act of 1901; but in regard to certain of these matters (such as the supply of means of escape from fire) councils are expressly charged by the Act with the duty of enforcing its provisions (*f*), and clearly they are bound to enforce those provisions of the Act of 1901 which are enforceable under the law relating to public health. In this article, therefore, only those provisions of the Act are treated (1) in which "the district council" is expressly mentioned, or (2) which are made enforceable under the law relating to public health. Those provisions of the P.H.A. of 1875 and 1890, which are applied or incorporated by the Act of 1901, are also dealt with. [917]

### FUNCTIONS OF COUNCILS : DEFINITIONS

**General Powers of Councils.**—The powers conferred upon councils by the Act of 1901 are in addition to any powers which they may possess under other statutes (sect. 155). The additional powers so conferred include, for the purpose of their duties with respect to workshops and workplaces under the Act, and under the law relating to

(*d*) 13 Statutes 623 *et seq.*

(*f*) Act of 1901, s. 14 (2), (3).

(*e*) *Ibid.*, 824 *et seq.*

public health, "all such powers of entry, inspection, taking legal proceedings or otherwise" as are enjoyed by a factory inspector under the Act of 1901; and these powers are conferred also upon the officers of the council (sect. 125). This section is extremely difficult to construe in the absence of any judicial decision upon it. The powers of entry and inspection possessed by a factory inspector under the Act are set out at length in sect. 119, together with penalties imposed on persons obstructing or delaying him in the exercise of his powers, which would presumably apply to persons obstructing or delaying the council or their officers.

The power to take proceedings is not conferred upon an inspector by the Act (sect. 120 does not so enact) and exists under the common law, which equally allows the council to prosecute; so that the provisions of sect. 125, so far as "taking proceedings" goes, would seem merely to subject the council to the limitations to which the inspector is subject. See also title FACTORY INSPECTOR.

Sect. 125 is concerned only with the duties and powers of the council with respect to workshops and workplaces, and gives them no power of entry into domestic factories or into those factories in which it is their duty to ascertain whether sufficient means of escape from fire or sanitary conveniences have been provided. [918]

**Places to which these Powers Extend.**—The council have powers, under the Act of 1901, in relation to factories, workshops and workplaces. Factories and workshops are defined in sect. 149 of the Act; the "workplaces" affected by it are those within the meaning of the P.H.A., 1875 (see sect. 2 (2) of the Act of 1901). The effect of these definitions is given in the succeeding paragraphs. As to factories (other than domestic factories) the powers and duties of the council are confined to the provision of means of escape from fire, and sanitary conveniences; in domestic factories, in workshops and workplaces, the matters with which the council are concerned are more various. The councils have nothing to do with factories and workshops belonging to or in the occupation of the Crown (see sect. 150 of the Act of 1901). [919]

**Definition of "Factory."**—Factories are defined in sect. 149 of the Act of 1901 as being either textile or non-textile factories, but the distinction between them is not material to local authorities in the administration of the Act. The definitions are too lengthy to be quoted here, and reference should be made to the text of the Act. As will be seen from Vol. 14 of Halsbury's Laws of England (2nd ed.), several legal decisions have been given on these definitions, and they have been found difficult to construe. During the last few years, the definitions have been judicially considered in several derating cases arising under the R. & V. (Apportionment) Act, 1928 (g). The facts in some of these are given in the title DERATING at pp. 357—360 of Vol. IV. [920]

**"Tenement Factory."**—Under sect. 149 (1) of the Act of 1901, the expression "tenement factory" means a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts constitute in law separate

factories ; and for the purpose of this definition all buildings situated within the same close or curtilage are to be treated as one building. The mechanical power must be supplied to the various factories from a common source (*h*). But the power may be supplied to different parts of the building by a person who is not the owner of the building (*i*). The definition is important to local authorities inasmuch as by sect. 14 (7) of the Act a tenement factory is to be deemed one factory for the provision of means of escape from fire, see *post*, p. 409. [921]

**Definitions of "Workshop"; "Tenement Workshop"; "Men's Workshop."**—The expression "workshop" means :

- (a) any premises or places named in Part II. of the Sixth Schedule to the Act which are not a factory ; and
- (b) any premises, room or place, not being a factory, in which premises, room or place or within the close or curtilage or precincts of which premises any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely :
  - (i.) the making of any article or of part of any article ; or
  - (ii.) the altering, repairing, ornamenting or finishing of any article ; or
  - (iii.) the adapting for sale of any article,  
and to or over which premises, room or place the employer of the persons working therein has the right of access or control" (sect. 149 (1)).

Sect. 149 (1) goes on to provide that the expression "workshop" includes a "tenement workshop," and that this means any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a workshop if the persons working therein were in the employment of the owner or occupier. Again by sect. 14 (7) of the Act, a tenement workshop is to be deemed one workshop for the provision of means of escape from fire, see *post*, p. 409.

It will be noticed that the chief distinction between "factory" and "workshop" lies in the use in the factory of "steam, water, or other mechanical power."

Sect. 114 qualifies the definition of workshop to this extent, that under either of two sets of conditions, the exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour does not of itself constitute that house or room a workshop. The first of these two sets of conditions is, if the labour is exercised by way of trade or for purposes of gain in or incidental to the handicrafts of straw plaiting (*k*), or pillow-lace making, or glove making, or any other light handicraft to which the Secretary of State may by special order extend this provision (sect. 114 (1)). No such special order has yet been made. The second set of conditions is, if the labour is exercised for purposes of gain in or incidental to (i.) the making of any article or part of any article ; (ii.) the altering, repairing,

(*h*) *Toller v. Spiers and Pond*, [1903] 1 Ch. 362 ; 24 Digest 898, 7 ; *Brass v. L.C.C.*, [1904] 2 K. B. 336 ; 24 Digest 898, 8.

(*i*) *Mumby v. Volp*, [1930] 1 K. B. 460 ; Digest (Supp.).

(*k*) If straw-plaiting is carried on in premises by persons who are not members of a family, the premises are a factory (*Beadon v. Parrott* (1871), L. R. 6 Q. B. 718 ; 24 Digest 904, 45).

ornamenting or finishing of any article ; or (iii.) the adapting for sale of any article, and in any such case is exercised at irregular intervals and does not furnish the whole or principal means of living to the family (sect. 114 (2)).

"Men's workshops" are defined in sect. 157 of the Act as workshops conducted on the system of not employing any woman, young person or child therein, and are specially exempted by this section from some of the provisions of the Act which apply to workshops in general.

[922]

**Definitions of "Domestic Factory" and "Domestic Workshop."**—These expressions mean (sect. 115) a private house, room or place which, though used as a dwelling, is by reason of the work carried on there a factory or a workshop, as the case may be, within the meaning of the Act and in which neither steam, water nor other mechanical power is used in aid of the manufacturing process carried on there and in which the only persons employed are members of the same family dwelling there. But sect. 112 qualifies this definition, for it enacts that if any manufacture, process or description of manual labour, which in pursuance of the Act has been certified by the Secretary of State to be dangerous (*l*), is carried on in a domestic factory or workshop, all the provisions of the Act are to apply, as if the place were a factory or workshop other than a domestic factory or workshop. [923]

**Meaning of "Workplace."**—This term is not defined in the Act of 1901, nor in the P.H.A., 1875, from which it is presumably borrowed. It also appears without definition in sect. 38 of the P.H. (London) Act, 1891 (*m*), and in a case (*n*) under that Act it was held that "workplace" does not necessarily mean a place where something is being manufactured or made ; but merely a place where some work is being perpetually or permanently done. The premises in that case were a cab-yard and stables, where cabs and horses were let out by the day to drivers, and where a number of cabdrivers were daily in attendance for hiring, changing, and returning horses and cabs. [924]

**Definitions of "Child" ; "Owner" ; "Woman" ; "Young Person."**—These terms are defined in sect. 156 of the Act, but "occupier," which is frequently used, is not so defined. It has, however, been discussed and its ordinary meaning indicated (*o*). [925]

#### SANITARY PROVISIONS

**Cleanliness : Limewashing, etc.**—Sect. 2 (1) of the Act of 1901, applies the provisions of sect. 91 of the P.H.A., 1875 (*p*), with respect to a factory, workshop, or workplace not kept in a cleanly state, to every factory (except any factory to which sect. 1 of the Act of 1901 applies), and to every workshop and workplace. When the limewashing, cleansing or purifying of a workshop is certified as necessary by the M.O.H. or sanitary inspector, the council must under sect. 2 (3) of the Act, give notice in writing to the owner or occupier of the workshop,

(*l*) For a list of the processes certified by the Home Secretary as dangerous under s. 79 of the Act, see 8 Statutes 558 and Supplement No. 3 (1984), Vol. 8, p. 29.

(*m*) 11 Statutes 1048.

(*n*) *Bennett v. Harding*, [1900] 2 Q. B. 397 ; 24 Digest 906, 53.

(*o*) *Moir v. Williams*, [1892] 1 Q. B. 264, at p. 270 ; 42 Digest 621, 220.

(*p*) 13 Statutes 661.

and if the notice is not complied with, the owner or occupier is liable under sect. 2 (4) to a daily fine of not exceeding 10s., and the council may cause the necessary limewashing or cleansing to be done and may recover the expenses from the person in default. The dates when lime-washing is performed must be entered in the general register of the factory or workshop (sect. 129), and this register must be produced to an officer of the council upon request (sects. 119, 125).

There would not appear to be any appeal against the requirements of a notice under sect. 2 (3) of the Act; but against a conviction, or an order to pay expenses under sect. 2 (4), an appeal is given to quarter sessions by sect. 145; and it would probably be possible upon such an appeal to raise the question whether the requirements of the notice were reasonable. [926]

**Ventilation.**—Sect. 91 (6) of the P.H.A., 1875 (*q*), provides that any factory, workshop, or workplace, not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, shall be deemed to be a nuisance liable to be dealt with summarily in manner provided by the Act.

This provision is applied by sect. 2 (1) of the Act of 1901 to every factory (except any factory to which sect. 1 of the Act applies), and to every workshop and workplace.

By sect. 7 (1) of the Act of 1901, sufficient means of ventilation are to be provided, and sufficient ventilation is to be maintained in every room in any factory or workshop, but domestic workshops and men's workshops (*r*) are exempted from this provision by sects. 111 (4) (e) and 157 (1) of the Act. The enforcement of sect. 7 in relation to factories does not concern the council, but a workshop in which there is a contravention of the section is by sub-sect. (3) to be deemed a nuisance liable to be dealt with summarily under the law relating to public health. Sects. 94 to 104 of the P.H.A., 1875 (*s*), are thus applied. A standard of sufficiency of ventilation may be prescribed for any class of factories or workshops by the Secretary of State (sect. 7 (2)); but this power does not seem to have been exercised as to workshops.

[927]

**Overcrowding.**—Overcrowding is another of the matters to which the nuisance provisions of the P.H.A., 1875, are applied by sect. 2 (1) of the Act of 1901 with regard to factories, workshops and workplaces, except any factory to which sect. 1 of the Act applies.

By sect. 91 (6) of the P.H.A., 1875 (*t*), any factory, workshop or workplace . . . so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein, is to be deemed a nuisance liable to be dealt with summarily in manner provided by the Act.

The term "overcrowding" is explained by sect. 3 (1) of the Act of 1901, which provides that a factory shall, for the purposes of the Act, and a workshop shall, for the purposes of the law relating to public health, be deemed to be so overcrowded as to be dangerous or injurious

(*q*) 13 Statutes 661.

(*r*) As to the meaning of these terms, see *ante*, p. 405.

(*s*) 13 Statutes 663 *et seq.*

(*t*) *Ibid.*, 661.

to the health of the persons employed therein, if the number of cubic feet of space in any room therein bears to the number of persons employed at one time in the room a proportion less than 250 or, during any period of overtime, 400 cubic feet of space to every person. As to overtime, see ss. 49—53 of the Act.

Sub-sects. (2), (3) of sect. 3 give the Secretary of State power to make special orders in this matter. He may (1) "modify this proportion" for any period during which any artificial means of illumination (other than electric light) are used (*u*) ; (2) substitute higher figures for those given in sub-sect. (1), as regards any particular manufacturing process or handicraft, and also as regards any workshop or workplace, not being a domestic workshop, which is occupied by day as a workshop and by night as a sleeping apartment. The last-mentioned power has been exercised by substituting 400 cubic feet for 250 cubic feet as the minimum of space for each person in a place so occupied (*a*).

Sect. 3 (4) requires that there shall be affixed in every factory and workshop a notice specifying the number of persons who may be employed in each room. [928]

**Effluvia.**—By sect. 2 (2) of the Act of 1901, every workshop and every workplace within the meaning of the P.H.A., 1875, must be kept free from effluvia arising from any drain, watercloset, earthcloset, privy, urinal or other nuisance, and, unless so kept, is to be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health. [929]

**Drainage of Floors.**—By sect. 8 (1) of the Act of 1901, in every workshop or part thereof in which any process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage, adequate means must be provided for draining off the wet. This provision is enforceable in the same way as that against effluvia, but does not apply to domestic workshops (sect. 111 (4) (*e*)), or to men's workshops (sect. 157) (*b*). [930]

**Sanitary Conveniences.**—Where Part III. of the P.H.A. Amendment Act, 1890, has been adopted, sect. 22 of that Act (*c*) regulates the provision of sanitary conveniences in workshops or manufactures, and in buildings in which persons are employed in any trade or business. Part III. may be adopted by a borough council or U.D.C. (sect. 3) (*d*). Part III. with the exception of certain sections may be adopted by an R.D.C., but sect. 22 is one of these exceptions (*e*). The M. of H. may however, under sect. 5 of the Act (*f*), declare sect. 22 to be in force in a rural district or part of a rural district.

Sect. 22 was not extended to rural districts in general by the Rural District Councils (Urban Powers) Order, 1931 (*g*).

Where sect. 22 is not in force, the provision of sanitary conveniences in factories and workshops is regulated by sect. 9 of the Act of 1901.

(*u*) This power has been exercised in regard to bakehouses in S.R. & O., 1903, No. 1157.

(*a*) See S.R. & O., 1902, No. 23 ; 1903, No. 1157.

(*b*) As to the meaning of these terms, see *ante*, p. 405.

(*c*) 13 Statutes 833.

(*d*) *Ibid.*, 824. Part III. is in force in most boroughs and urban districts.

(*e*) See ss. 3 (2) and 50 of the Act of 1890 ; 13 Statutes 825, 842.

(*f*) 13 Statutes 826.

(*g*) 24 Statutes 262. It is in force in a few only of the rural districts.

Sect. 38 of the P.H.A., 1875 (*h*), also deals with the subject, but appears to be obsolete in relation to premises covered by sect. 9 of the Act of 1901. In any event, sect. 38 extends only to buildings in which both male and female persons are employed. [931]

Where sect. 22 of the Act of 1890 is in force, every building used as a workshop or manufactory, or where persons are employed or intended to be employed in any trade or business, whether erected before or after the adoption of Part III. of the Act, must be provided with sufficient and suitable accommodation in the way of sanitary conveniences, having regard to the number of persons employed in or in attendance at such building, and also where persons of both sexes are employed, or intended to be employed, or in attendance, with proper separate accommodation for persons of each sex.

Where it appears to a council on the report of their surveyor that the section is not complied with in the case of any building, they may, if they think fit, by written notice, require the owner or occupier of the building to make such alterations and additions therein as may be required to give such sufficient, suitable, and proper accommodation as is required by the section (*i*).

A person who neglects or refuses to comply with any such notice is liable for each default to a penalty not exceeding £20, and to a daily penalty not exceeding 40s.

A notice under the section must specify the alterations and additions which the council require to be made; and the requirements in the notice are subject to an appeal to quarter sessions under sect. 7 of the Act of 1890 (*k*), both upon the question whether additional accommodation is necessary and upon the question whether the amount of accommodation required is reasonable or proper. An appeal to quarter sessions also lies against a conviction under the section; but in such an appeal the questions above stated concerning the merits of the notice cannot be raised, and the only questions open are whether the notice has been duly served upon the proper person, and whether its requirements have been fulfilled (*l*). Note that the council cannot issue a notice under sect. 22 (2) unless their surveyor has reported to them that the provisions of sect. 22 (1) of the Act of 1890 are not complied with, and also that a sanitary inspector is not authorised by the section to report.

“Daily penalty” in the section means a penalty for each day on which the offence is continued after conviction (see sect. 11 (3) of the Act) (*m*). [932]

Where sect. 22 of the Act of 1890 is in force, sect. 9 of the Factory and Workshop Act, 1901, does not apply (*n*). But where sect. 22 is not in force, the provision of sanitary conveniences in factories and workshops is governed by sect. 9 of the Act of 1901, although men’s workshops are by sect. 157 exempted from it. By sect. 9, every factory and workshop must be provided with sufficient and suitable accommodation in the way of sanitary conveniences, regard being had to the number of persons employed in or in attendance at the factory or

(*h*) 13 Statutes 641.

(*i*) For form of notice and report, see Encyclopædia of Forms and Precedents, 2nd ed., Vol. 12, pp. 179, 311, 315.

(*k*) 13 Statutes 826.

(*l*) *Tracey v. Pretty*, [1901] 1 K. B. 444; 24 Digest 906, 54.

(*m*) 13 Statutes 827.

(*n*) See sub-sect. (4) of s. 9.

workshop, and also where persons of both sexes are or are intended to be employed or in attendance, with proper separate accommodation for persons of each sex. A factory or workshop in which there is a contravention of this section is to be deemed not to be kept in conformity with the Act of 1901.

It seems to follow that in places where sect. 9 is in force, the council are not concerned with the provision of sanitary conveniences in either factories or workshops; but there appears to be no legal decision on this point.

By the Sanitary Accommodation Order, 1903 (*o*), the Secretary of State has, under sub-sect. (2) of sect. 9, prescribed a standard of sufficient and suitable accommodation to be observed under the section.

[933]

**Nuisances by Smoke.**—See the title SMOKE ABATEMENT.

#### MEANS OF ESCAPE FROM FIRE

Sect. 14 of the Act of 1901 contains important provisions to secure the provision of means of escape from fire in all factories and workshops in which more than forty persons are employed. Whether premises constitute one factory or one workshop has been discussed more than once (*p*).

**Escapes in Factories or Workshops Built since 1892 or 1896.**—Sect. 14 of the Act of 1901 requires the provision of means of escape from fire in every factory and workshop in which more than forty persons are employed; but it divides such factories and workshops into two classes, and applies different regulations to each class. The first class contains every factory of which the construction was not commenced on or before January 1, 1892, and every workshop of which the construction was not commenced before January 1, 1896; and the second class contains all other factories and workshops. By sect. 14 (1), a factory or workshop of the first class must be furnished with a certificate (*q*) from the council of the borough or district in which it is situate that it "is provided with such means of escape in case of fire for the persons employed therein as can reasonably be required under the circumstances of each case"; if no such certificate is furnished, it is to be deemed not to be kept in conformity with the Act. It is the duty of the council to examine every factory or workshop of this class, and on being satisfied that it is provided with means of escape as above, to grant the certificate, which must specify in detail the means of escape so provided. The council are thus constituted the sole judges of what means of escape are reasonably necessary in factories and workshops of this class, for there does not appear to be any appeal against their refusal to grant a certificate, nor indeed any method by which the owner of a factory or workshop of this class can get the requirements of the council modified. If, however, the council fail to perform the duty imposed upon them by the sub-section, or if where they have refused to grant a certificate of safety the council do not

(*o*) S.R. & O., 1903, printed in Vol. 4 of S.R. & O., Revised, 1904.

(*p*) See *L.C.C. v. Lewis* (1900), 69 L.J. (Q.B.) 277; 24 Digest 898, 6; *Toller v. Spiers and Pond, Ltd.*, [1903] 1 Ch. 362; 24 Digest 913, 91; *Re L.C.C. and Tubbs* (1903), 68 J.P. 29; 24 Digest 899, 10.

(*q*) For form of certificate, see *Encyclopædia of Forms and Precedents*, 2nd ed., Vol. 12, p. 185.

proceed to enforce the provision of escapes on notice being given to them by the factory inspector under sect. 5 (1) of the Act, as applied by sect. 14 (5), the inspector may take proceedings, under sect. 5 (3) of the Act, to remedy the defect (r).

By virtue of the general right to enter and inspect workshops for the purpose of their duties under this Act, conferred upon a council and their officers by sect. 125, read with sect. 119 (s), they have power to enter workshops for the purposes of sect. 14 (1); but as regards factories, their powers of entry and inspection for this purpose are derived from the words "it shall be the duty of the council to examine" in this sub-section, and it is not clear that resistance to an officer's entry would subject the offender to a penalty. [934]

**Escapes in Factories or Workshops Built before 1892 or 1896.**—The procedure regarding factories and workshops employing more than forty persons, the construction of which was commenced on or before January 1, 1892, in the case of factories, and before January 1, 1896, in the case of workshops, differs in most respects from that already described. Sect. 14 (2) makes it the duty of the council from time to time to ascertain whether all such factories and workshops within their district are provided with such means of escape in case of fire for the persons employed therein as can reasonably be required under the circumstances of each case. In the case of any factory or workshop not so provided, it is the duty of the council to serve on the owner a notice (t) in writing specifying the measures necessary for providing such means of escape, and requiring him to carry them out before a specified date. Thereupon the owner, notwithstanding any agreement with the occupier, is given power to take such steps as are necessary for complying with the requirements. Unless these are complied with, the owner is liable to a fine not exceeding £1 for every day that the non-compliance continues.

An appeal against a conviction for such an offence lies to quarter sessions under sect. 145 of the Act.

Proceedings under sect. 14 (2) cannot be taken jointly in respect of two or more factories or workshops separately occupied, even though they have a common owner (u).

Upon a summons for non-compliance, the fact that the requirement cannot be fulfilled by the owner without committing a trespass on property, other than the premises which are the subject of the requirement, is a good defence (a). [935]

As to the powers of the council and their officers to enter and inspect workshops and factories for the purposes of sect. 14 (2), much the same point may be made as that arising under sect. 14 (1) of the Act (b).

If the council fail to perform their duty under sect. 14 (2), a factory inspector may take action under sect. 5 of the Act (c).

(r) As to proceedings under s. 5, see *post*, p. 417.

(s) See *post*, p. 416.

(t) For form of notice, see *Encyclopædia of Forms and Precedents*, 2nd ed., Vol. 12, p. 184.

(u) *Toller v. Spiers and Pond, Ltd.*, [1903] 1 Ch. 362; 24 Digest 913, 91.

(a) *L.C.C. v. Brass* (1901), 17 T. L. R. 504; 24 Digest 913, 88; *Consolidated Properties Co. v. Chilvers* (1901), 18 T. L. R. 59; 24 Digest 913, 87.

(b) See *supra*.

(c) See *post*, p. 417.

The provision in sect. 14 (2) of the Act giving the owner power to take such steps as are necessary for complying with the council's requirements notwithstanding any agreement with the occupier, gives him a right of entry upon the particular premises which are to be provided with the means of escape from fire, as against the lessee of those premises. The owner has, however, no right, in complying with such a requirement as regards any factory, to enter upon any other premises not in his own occupation which are not a factory (d); nor upon such other premises even if they are a factory, but do not at the time need means of escape (e). Further, the owner cannot enter upon one factory, which is not in his own occupation, to do works for the benefit of another factory; nor can he so enter, even to do works which will benefit both factories jointly (f). [936]

Where the council have taken proceedings in relation to a factory or workshop under sect. 14 (2), and there is a difference of opinion between the owner and the council, sub-sect. (3) requires that the difference shall, on the application of either party (to be made within one month after the difference arising), be referred to arbitration. The procedure on these arbitrations is prescribed in the First Schedule to the Act. The award on the arbitration is binding on the parties, and the notice of the council is to be discharged, amended or confirmed in accordance with the award. The arbitrator or umpire (as the case may be) who makes the award has power to state a special case for the opinion of the King's Bench Division upon a point of law (g). [937]

**Maintenance of Escapes.**—By sect. 14 (6) of the Act of 1901, the means of escape in case of fire provided in any factory or workshop must be maintained in good condition and free from obstruction, and if it is not so maintained the factory or workshop is to be deemed not to be kept in conformity with the Act. This provision extends to both classes of factories and workshops referred to in sect. 14; *prima facie*, it would appear to apply to all factories and workshops whatever; but this can scarcely have been intended, and probably the word "provided" means "provided under sub-sect. (1) or sub-sect. (2) of this section." [938]

**Expenses of Councils.**—Under sect. 14 (8) all expenses incurred by a U.D.C. in the execution of the section were to be defrayed as part of their expenses of the general execution of the P.H.A., 1875; but this provision was repealed by the L.G.A., 1933, and is replaced by sects. 185, 188 and 191 of that Act (h) containing general provisions for the discharge of all liabilities of borough and district councils from the rate fund.

The expenses of a R.D.C. under sect. 14 are to be defrayed as special expenses, that is to say, from a special rate levied on the contributory place in respect of which they were incurred. [939]

**Power to make Bye-laws.**—Under sect. 15 of the Act of 1901, a council may make bye-laws providing for means of escape from fire in the case of any factory or workshop. This power is not confined to factories or workshops where more than forty persons are employed;

(d) *L.C.C. v. Lewis* (1900), 69 L. J. (Q. B.) 277; 24 Digest 898, 6.

(e) *L.C.C. v. Brass* (1901), 17 T. L. R. 504; 24 Digest 913, 88.

(f) *Toller v. Spiers and Pond, Ltd.*, [1903] 1 Ch. 362; 24 Digest 913, 91.

(g) *Re L.C.C. and Tubbs* (1903), 68 J. P. 29; 24 Digest 899, 10.

(h) 26 Statutes 407, 408, 410.

and is in addition to any powers that the council may possess with reference to the prevention of fire. By sect. 15 of the Act of 1901, sects. 182 to 186 of the P.H.A., 1875 (*i*), were applied to these bye-laws, with the result that the confirmation of the M. of H. is necessary. But the procedure in making bye-laws, the power to impose penalties for their breach, the printing of copies and the mode of authenticating a copy as evidence, are now governed by sects. 250 to 252 of L.G.A., 1933 (*k*), instead of the P.H.A., 1875. A model series of bye-laws has been issued by the M. of H. and may be purchased of H.M. Stationery Office, Kingsway, London, W.C.2. See also titles BYE-LAWS and FIRE PROTECTION. [940]

#### ADMINISTRATIVE PROVISIONS

**Notices and Registers.**—Under sect. 127 of the Act of 1901 every person who begins to occupy a factory or workshop is bound (under a fine not exceeding £5) within a month to serve on the factory inspector of the district a notice containing the name and situation of the factory or workshop, the nature of the work, the nature and amount of the moving power, the address to which he desires his letters to be addressed, and the name of the person or firm under which the business of the factory or workshop is to be carried on. Where an inspector receives such a notice with respect to a workshop he must forthwith forward the notice to the council of the borough or district in which the workshop is situate.

Sect. 131 of the Act requires every council to keep a register of all workshops situate within their area (*l*). [941]

In every factory and workshop an abstract of the Act (*m*) and certain other notices are to be affixed, under a fine for a contravention not exceeding 40s. (sect. 128). But domestic factories and domestic workshops and men's workshops are exempted from this requirement by sects. 111, 157 of the Act, and laundries at certain charitable or reformatory institutions by sect. 5 (2) (c) of the Factory and Workshop Act, 1907 (*n*).

Notices given under sect. 128 cannot be produced as evidence in court, nor can secondary evidence be given of their contents (*o*).

Sect. 129 of the Act of 1901 requires that in every factory and workshop (*p*) there shall be kept a general register, in the form, and giving the particulars, prescribed by the Secretary of State, regarding various matters, including limewashing (*q*). Under sect. 129 (2) any entry required to be made in the general register by or on behalf of the occupier is, against him, *prima facie* evidence of the facts therein stated; and the failure to make a required entry is *prima facie* evidence that

(*i*) 13 Statutes 704—706.

(*k*) 26 Statutes 440—442.

(*l*) For a form of register, see Encyclopædia of Forms and Precedents, 2nd ed., Vol. 12, p. 196.

(*m*) The prescribed form may be purchased of H.M. Stationery Office.

(*n*) 8 Statutes 610.

(*o*) *Owner v. Bee Hive Spinning Co., Ltd.*, [1914] 1 K. B. 105; 24 Digest 927, 188.

(*p*) Again domestic factories and domestic workshops, and men's workshops, are exempted from this provision by the enactments referred to above.

(*q*) See *ante*, p. 405, as to limewashing. The prescribed form of register may be purchased of H.M. Stationery Office.

the provision of the Act with respect to which the entry is required has not been observed. Under sub-sect (4) the occupier is bound to send to the factory inspector such extracts from this register as the inspector may require for the execution of his duties under the Act. The right to require such extracts from the occupier of a workshop is probably extended to the council and their officers by sect. 125; and certainly they can claim to inspect this register upon their inspection of a workshop; see sect. 119 (1) (c) of the Act. They may also, it would appear, inspect upon such an occasion the abstract of the Act and the notices required by sect. 128 to be affixed. The penalty for a breach of sect. 129 is a fine not exceeding £5. [942]

**M.O.H.**—The M.O.H. of the council must, in his annual report to them, report specifically on the administration of the Act of 1901 in workshops and workplaces, and must send a copy of his annual report, or so much of it as deals with this subject, to the Secretary of State (sect. 132).

By sect. 133 the M.O.H. is directed to give written notice to the factory inspector for the district when he becomes aware that any woman, young person, or child is employed in a workshop in which no abstract of the Act is affixed (*r*).

The powers of the M.O.H. in certifying that lime-washing, cleansing, or purifying is necessary in a workshop have already been mentioned (*s*). Under sect. 5 (2) of the Act of 1901 he may be taken into a factory or workshop by a factory inspector.

For the medical officer's powers in respect of retail bakehouses, see title **BAKEHOUSES**. [943]

**Powers of Factory Inspector on Default of Council.**—See title **FACTORY INSPECTOR**.

**Inspection by Councils and their Officers.**—By sect. 125 of the Act of 1901, the council and their officers, for the purpose of their duties in workshops and workplaces, have the same powers of entry and inspection or otherwise as a factory inspector (*t*). These powers (as far as workshops are concerned) are conferred upon an inspector by sect. 119 of the Act, but as pointed out, *ante*, on p. 410, the precise effect of sect. 125 is not clear as regards factories.

Sect. 119 does not mention workplaces; but sect. 125 probably gives the council and their officers the same rights of entry, inspection, etc., as to workplaces that the inspector enjoys as to workshops. [944]

**Liability of Actual Offender.**—Where an offence for which the occupier of a factory or workshop is liable under the Act of 1901 to a fine has in fact been committed by some agent, servant, workman or other person, that person is liable to the like fine as if he were the occupier (sect. 140). Under sect. 141 (1) where the occupier of a factory or workshop is charged with an offence against the Act, he may have the actual offender brought before the court, and if the court is satisfied that the occupier had used due diligence to enforce the Act, and that the actual offender had committed the offence without the knowledge,

(*r*) For a form of this notice, see *Encyclopædia of Forms and Precedents*, 2nd ed., Vol. 12, p. 197.

(*s*) See *ante*, p. 405.

(*t*) See title **FACTORY INSPECTOR**.

consent or connivance of the occupier, the actual offender must be convicted and the occupier will be exempt from any fine.

In the circumstances described in sect. 141 (2), proceedings must be taken against the actual offender instead of the occupier. [945]

**Limit to Daily Fines.**—A person is not liable, in respect of a repetition of the same kind of offence from day to day, to any larger amount of fines than the highest fine fixed by the Act for the offence, except where the repetition of the offence occurs after an information has been laid for the previous offence (sect. 143). [946]

**Prosecutions and Appeals.**—Sect. 144 requires all offences under the Act to be prosecuted and all fines to be recovered before a court of summary jurisdiction, and by sect. 145, a right of appeal to quarter sessions is given to any person who is aggrieved by a conviction or order made by a court of summary jurisdiction. By sect. 146 informations for offences must be laid within three months. This limitation does not apply where the offence is a continuing offence (*u*), but fines in respect of a continuing offence cannot be imposed for a longer period than the period of six months immediately preceding the issue of the summons (*a*). [947]

**Service of Notices, etc.**—Notices, orders, requisitions, summonses and documents required or authorised to be served or sent for the purposes of the Act of 1901, may be sent by post addressed to the occupier of the factory or workshop, or by delivering the same or a copy to an agent of the occupier or some person in the factory or workshop (sect. 148). See also sect. 1 of the Service of Process (Justices) Act, 1933 (*b*). Where any such document is required to be served on or sent to the occupier of a factory or workshop, it is deemed to be properly addressed, if addressed to him (*i.e.* the occupier) at the factory or workshop, with the addition of the proper postal address, but without naming the person who is the occupier (*c*). [948]

**Procedure under Law relating to Public Health.**—As to the manner of enforcing those provisions of the Act of 1901 which are to be dealt with under the law relating to public health, and those provisions of the P.H.A., 1875, which apply to factories and workshops, see sects. 91—111 and sect. 251 of the latter Act (*d*), and the title **NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS.** [949]

**Cotton Cloth Factory Buildings.**—By sect. 2 of the Factory and Workshop (Cotton Cloth Factories) Act, 1929 (*e*), no plans or sections relating to the erection or conversion of a building proposed to be used as a cotton cloth factory (*f*) may be approved by a local authority, unless they are accompanied by a certificate issued by the Superintending Factory Inspector for the division that the building to which the plans or sections relate would not, if erected or converted in accordance with them, contravene the regulations (*g*) in force under the Act. [950]

(*u*) *Higgins v. Northwich Union Guardians* (1870), 22 L. T. 752; 24 Digest 941, 286.

(*a*) *R. v. Slade*, [1895] 2 Q. B. 247; 33 Digest 357, 666.

(*b*) 26 Statutes 557.

(*c*) Act of 1901, s. 148.

(*d*) 13 Statutes 661—670, 730.

(*e*) 8 Statutes 654.

(*f*) For definition, see Act of 1929, s. 3; 8 Statutes 654.

(*g*) S.R. & O., 1929, No. 300.

## LONDON

The Factory and Workshop Acts, 1901 and 1907, extend to London, and the local authorities concerned in the administration of certain of their provisions (except those as to means of escape from fire mentioned below) are the metropolitan borough councils and the Common Council of the City of London (sect. 153).

When the enactments as to public health in London were consolidated in the P.H. (London) Act, 1891, an attempt was made to co-ordinate that Act more closely with the Factories and Workshops Acts then in force. For instance, sect. 2 (1) (g) of the Act of 1891 (*h*), provides that any factory, workshop or workplace which is not a factory subject to the provisions of the Factory and Workshop Act, 1878, as to cleanliness, ventilation and overcrowding (*i*) shall, if the conditions mentioned in sect. 2 (1) (g) are not fulfilled, be nuisances liable to be dealt with summarily under the Act of 1891; and sect. 2 of the Act of 1901 does not apply to any workshop or workplace to which the Act of 1891 applies—see sect. 2 (5). Overcrowding, insufficient ventilation and insanitary conditions are among the matters dealt with in sect. 2 (1) (g) of the Act of 1891. Section 25 of the Act of 1891 (*k*), provides for the limewashing, cleansing or purifying of workshops or workplaces (*l*). Sect. 26 relates to bakehouses in London and is summarised in the title BAKEHOUSES on p. 540 of Vol. I. Sect. 38 of the Act of 1891 (*m*) relates to the provision of sanitary conveniences in factories and workshops and workplaces and replaces sect. 9 of the Factory and Workshop Act, 1901, which does not extend to London. Sect. 100 of the Act of 1891 (*n*) allows the L.C.C., on a default of the sanitary authority in their duty under the Act with respect to the removal of nuisances, etc., to prosecute in place of the sanitary authority.

The M.O.H. must give notice to the factory inspector under sect. 27 of the Act of 1891 (*o*), when he becomes aware that any child, young person or woman is employed in a workshop. None of these terms is defined in the Act of 1891.

As regards means of escape from fire in factories and workshops, the local authority for the administration of sect. 14 of the Act of 1901, and for making bye-laws under sect. 15, is throughout London the L.C.C.—see sect. 153 of the Act. [951]

(*h*) 11 Statutes 1026.

(*i*) Repealed and replaced by the Act of 1901.

(*k*) 11 Statutes 1042.

(*l*) The reference to workplaces occurs in sub-s. (2) of s. 25, which also extends the section to any factory not subject to the Act of 1901.

(*m*) 11 Statutes 1048.

(*n*) *Ibid.*, 1081.

(*o*) *Ibid.*, 1043.

## FACTORY INSPECTOR

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*See also titles : BAKEHOUSES ;  
FACTORIES AND WORKSHOPS.*

[Note.—References in this title to councils relate to the local authorities called "district councils" in the Factory and Workshop Act, 1901 (*a*), viz. borough councils (including county borough councils), urban district councils and rural district councils. References to sections, except where otherwise stated, are to the Act of 1901 above mentioned.]

**Appointment.**—The Secretary of State may appoint—with the approval of the Treasury as to numbers and salaries—such number of factory inspectors as may be necessary for the execution of the Factory and Workshop Act, 1901, and assign to them their duties (sect. 118 (1)). In the appointment of inspectors for Wales and Monmouthshire, among candidates otherwise equally qualified, persons having a knowledge of the Welsh language are to be preferred (sect. 118 (2)). A chief factory inspector in London may be appointed, and any inspector may be removed by the Secretary of State (sect. 118 (1)). [952]

**Powers.**—In addition to other powers mentioned in sect. 119 and other sections of the Act of 1901, inspectors may enter, inspect and examine at all reasonable times, by day and night, every part of a factory or workshop, when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop (sect. 119 (1) (*a*)). If an inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, he may take a constable with him into a factory or workshop (sect. 119 (1) (*b*)). He may require the production of the registers and documents kept in pursuance of the Act, and inspect and copy them (sect. 119 (1) (*c*))). An inspector may also make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health, and the Act of 1901, are complied with (sect. 119 (1) (*d*))); may enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated (sect. 119 (1) (*e*))); and may exercise such other powers as may be necessary for carrying the Act into effect (sect. 119 (1) (*g*))).

An inspector may take with him into a factory or workshop an M.O.H., sanitary inspector, or other officer of the council (sect. 5 (2)) in cases where it appears to him that an act, neglect or default exists in a factory or workshop and that such act, neglect or default is punishable or remediable under the law relating to Public Health and not so remediable under the Act of 1901 (sect. 5 (1)). [953]

If the Secretary of State is satisfied that the Factory and Workshop Act, 1901, or the law relating to public health so far as it affects factories, workshops and workplaces, has not been carried out by a council, he may by order authorise an inspector to take during such period as may be mentioned in the order, such steps as appear necessary or proper for enforcing those provisions (sect. 4).

An inspector so authorised is invested, for the purpose of carrying out this authority, with the same powers with respect to workshops and workplaces as he has with respect to factories and he may, for that purpose, take the like proceedings for enforcing the Act or the law relating to public health or for punishing or remedying any default as might be taken by the council (sect. 4 (2)).

All such expenses in and about any proceedings as he may incur and as are not recovered from any other person may be recovered by the inspector from the council (*ibid.*).

The words "may take the like proceedings" also occur in sect. 5 (3) of the Act of 1901 and were discussed in *Tracey v. Pretty* (*b*), and seem when action is taken under sect. 4 to make the position of the inspector in every respect similar to that of the council. Under sect. 18 (2), if the inspector has been authorised to enforce the Act of 1901 or the law relating to public health (but not unless he has been so authorised), he may set the machinery of sect. 18 in motion. That is, he may complain under the section to a court of summary jurisdiction that a place used as a workshop, or as part of a workshop, is in such a condition that any manufacturing process or handicraft carried on therein cannot be so carried on without danger to health or to life or limb; and the court, on being satisfied on this point, may prohibit the use of that place for the purpose of that process or handicraft until such works have been executed as are, in the opinion of the court, necessary to remove the danger.

But there are certain matters, primarily in charge of the council, in regard to which the inspector can take action of his own accord and without any special authority from the Secretary of State. These are, under sect. 5 (1) of the Act, any act, neglect or default in relation to any drain, watercloset, earthcloset, privy, ashpit, water-supply, nuisance or other matter in a factory or workshop, punishable or remediable under the law relating to public health, but not punishable or remediable under the Act of 1901 (*c*); and under sect. 14 (5), the provision of means of escape from fire in all factories and workshops in which more than forty persons are employed. In respect, then, of any of these matters, if it appears to the factory inspector that action should be taken, he must under sect. 5 (1) give notice in writing of the act, neglect or default to the council, upon receipt of which it becomes their duty to make such inquiry into the subject of the notice, and take such action thereon, as seems to them proper for the purpose of enforcing the law, and to inform the inspector of the proceedings taken in consequence of the notice.

Under sect. 5 (3) of the Act, where such a notice has been given by a factory inspector to a council, and proceedings are not taken within

(*b*) [1901] 1 K. B. 444; 24 Digest 906, 54.

(*c*) This was held in the case of *Tracey v. Pretty* (*supra*), to include not only any neglect or default in respect of existing waterclosets, etc., but also the insufficiency or unsuitableness of existing accommodation in the way of sanitary conveniences.

one month for punishing or remedying the act, neglect or default, the inspector may take the like proceedings for punishing or remedying the same as the council might have taken, and is entitled to recover his expenses from them to the same extent as he can under sect. 4, but with the restriction that he cannot recover expenses incurred in any unsuccessful proceedings. The case of *Tracey v. Pretty, ante*, was decided upon sect. 2 of the Factory and Workshop Act, 1891 (now repealed), which contained similar words ; and there it was held that an inspector acting in this manner stands in the shoes of the local authority. He can give a notice of requirement under sect. 22 of the P.H.A. Amendment Act, 1890 (if this section is in force), in the same way as the local authority ; it must contain the same particulars and is subject to the same right of appeal, and has the same effect, if not appealed against, as if the local authority had given the notice (d). Nor can the merits of such a notice given by an inspector be gone into on a summons for non-compliance (e). [954]

**Duties.**—An inspector must send to the council each notice received from any person who begins to occupy a workshop in the area of the council (sect. 127) (f). Notice must also be given by the inspector to the council in whose area a factory or workshop is situate of any act, neglect or default in a factory or workshop which is punishable or remediable under the P.H.As., but not under the Act of 1901. This duty is imposed on the inspector by sect. 5 of the Act, which has already been summarised. See *supra* as to the later proceedings to be taken. These proceedings may only be instituted for matters which are remediable under the P.H.As. and not under the Act of 1901 (sect. 5 (1)).

The following matters are specifically mentioned in the Act of 1901 as being matters remediable under the P.H.As. Overcrowding in a workshop (sect. 3) ; insufficient means of ventilation in a workshop (sect. 7 (3)) ; and inadequacy of floor drainage in a workshop in which floors are liable to be wet (sect. 8 (2)), except a laundry workshop (g). The provision of means of escape in case of fire is also enforced by the council, but the factory inspector may intervene where the council have refused to give a certificate of safety under sect. 14 (1) of the Act as respects a factory built since 1892 or a workshop built since 1896, in either of which more than forty persons are employed, and the council do not proceed to enforce the provision of escapes, upon notice being given to them by the inspector (h). [955]

**London.**—For the position in London, see *ante*, p. 415, under the title FACTORIES AND WORKSHOPS. [956]

(d) On these points, see *ante*, p. 417.

(e) See *Tracey v. Pretty, supra*.

(f) Further as to this provision, see *ante*, p. 412.

(g) Factory and Workshop Act, 1907, s. 3 ; 8 Statutes 609.

(h) Ss. 5, 14 (5) ; 8 Statutes 520, 526. See also *ante*, p. 410.

## FAIR WAGE CLAUSE

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*See also title : CONTRACTS.*

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**Introduction.**—Resolutions as to rates of wages to be paid by contractors carrying out Government contracts were passed by the House of Commons in 1891 and in 1895, but these applied to wages only. In 1909 the matter was brought up again and on March 10 of that year a resolution was passed to set up an advisory committee to recommend a fair wage clause which should deal with hours, conditions and wages. This was done and the form recommended was substantially the same as that in general use to-day, set out below. A circular, dated September 2, 1911 (*a*), was sent to local authorities by the Local Government Board recommending that the clause should be introduced into contracts which were not entered into by Government departments, but which involved the expenditure of public money or other consideration granted by a Government department or which required the approval of the department. Since that time, therefore, it has been usual for local authorities to include in their standing orders requirements that clauses in the form suggested or in some other form should be contained in their conditions of contract.

[957]

**Statutory Conditions.**—The inclusion of a fair wage clause as a condition for the reception of a Government grant has been prescribed in several statutes.

By sect. 3 (1) (d) of the Housing (Financial Provisions) Act, 1924 (*b*), in order to obtain a Government grant in respect of houses provided by a local authority, a fair wage clause which complies with the requirements of any resolution of the House of Commons applicable to contracts of Government departments and for the time being in force must be inserted in all contracts for the construction of the houses. By sect. 3 (2) (d) (*c*), this is to apply also to houses provided by a society, body of trustees or company, and by sect. 27 (1) (e) of the Housing Act, 1930 (*d*), it applies also to houses provided by local authorities for persons displaced owing to action taken by them for dealing with clearance or improvement areas, or for the demolition of insanitary houses, or for the closing of parts of buildings under that Act. [958]

The M. of T. will only give grants from the Road Fund where a fair wage clause which complies with the requirement of any resolution of the House of Commons for the time being in force with respect to

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(*a*) See Lumley's Public Health, 10th ed., p. 3125.  
 (*c*) *Ibid.*, 996

(*b*) 13 Statutes 995.  
 (*d*) 23 Statutes 419.

contracts of Government departments is inserted in any contracts entered into in connection with works to which the grants relate (e). By sect. 93 of the Road Traffic Act, 1930 (f), the wages paid by the holder of any road service licence to persons employed by him in connection with the operation of a public service vehicle and the conditions of their employment must not be less favourable than the conditions which would be observed in a Government contract. [959]

Sect. 3 (1) of the British Sugar (Subsidy) Act, 1925 (g), enacted that the wages paid by any employer to persons employed in connection with the manufacture of sugar or molasses in respect of which a subsidy was payable under the Act, were not to be less than would be payable if the manufacture were carried on under a contract made between the employer and a Government department containing a fair wage clause, unless the wages were paid at a rate agreed upon by a joint industrial council. [960]

**Local Authorities' Contracts.**—The law as to contracts of local authorities is now contained in sect. 266 of the L.G.A., 1933 (h), which replaces sects. 173, 174 of the P.H.A., 1875 (i), now repealed by the Act of 1933, but extends to contracts of county councils and parish councils as well as those of borough and district councils. By sect. 266 all contracts made by any such council or by any of their committees must be made in accordance with the standing orders of the council, and in the case of contracts for the supply of goods or materials or for the execution of works, the standing orders must require that notice of the intention of the council or committee to enter into the contract must be published and tenders invited, subject to exceptions provided for in the standing orders, and must regulate the manner in which the notices are to be published, and the tenders invited. Model standing orders were published with circular of the M. of H. dated March 28, 1934 (k), and clause 11 of the standing orders refers to a fair wage clause. In a note to clause 11, the circular points out that some local authorities have their own form, but that the model clause follows the fair wages resolution of the House of Commons. [961]

Clause 11 is as follows : In every written contract for the execution of work or the supply of goods or materials the following clause shall be inserted : "The contractor shall in the execution of the contract pay rates of wages and observe hours of labour not less favourable than those commonly recognised by employers and trade societies (or, in the absence of such recognised wages and hours, those which in practice prevail amongst good employers) in the trade in the district where the work is carried out. Where there are no such wages and hours recognised or prevailing in the district, those recognised or prevailing in the nearest district in which the general industrial circumstances are similar shall be adopted. Further, the conditions of employment generally accepted in the district in the trade concerned shall be taken into account in considering how far the terms of this clause are being observed. The contractor shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons whatever, any portion of his contract without the written permission

(e) See circulars, the latest being No. 392 (Roads) dated April 28, 1934, at p. 6.

(f) 23 Statutes 673.

(g) 16 Statutes 935.

(h) 26 Statutes 447.

(i) 13 Statutes 698.

(k) No. 1388 and end. To be purchased of H.M. Stationery Office, Kingsway, W.C.2, price 2d.

of the council. Sub-letting, other than that which may be customary in the trade concerned, shall be prohibited. The contractor shall be responsible for the observance of this clause by the sub-contractor.”

[962]

Another form of clause is as follows (*l*) : “ The contractor shall pay to every mechanic, artizan, craftsman and labourer employed by him in the performance of this contract, wages at a rate not less than the trade union or standard rate of wages in force in their several trades at the date of his tender, and during the period of execution of this contract, such standard to mean that agreed upon by the Association or Associations of Employers and Employees in the Trade Unions concerned, and shall also observe the hours and conditions of labour as well as the aforesaid rate of wages agreed upon and confirmed as aforesaid, and in case of any breach of this condition the contractor shall pay to the council by way of liquidated damages, a sum equivalent to the difference between the aggregate amount of the wages actually paid by the contractor to his aforesaid workmen or any of them, and the aggregate amount which, by this condition, the contractor is required to pay to such workmen on account of the same services, and such sum may be deducted by the council from any moneys which may become payable to the contractor under this contract or may be recovered by them in action.” [963]

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(*l*) Conditions of Contracts for Works of the St. Marylebone Borough Council.

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## FAIRS

*See MARKETS AND FAIRS.*

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## FEEBLE MINDED PERSONS

*See MENTAL DEFECTIVES.*

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## FEEDING STUFFS

*See FERTILISERS AND FEEDING STUFFS.*

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# FEES

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## INTRODUCTORY

This article will deal with the fees received by officers of local authorities, whether in fact paid over to the authority or retained by the officer. A number of statutes, both public general and local, have provided that certain specified services to the public shall be performed by a local authority, and in return for them a fee is to be paid to some officer. Such services are usually performed by the town clerk or clerk of the council, who in consequence receives the fees. It will be convenient, therefore, first to set out a list of the matters which are dealt with in the department of the town clerk or clerk, and in respect of which fees are payable, and to deal subsequently with fees payable to other officers. For the fees payable to local authorities for particular services, see the appropriate titles, e.g. for fees for certificates that property is decontrolled, see title HOUSING. [964]

## FEES RECEIVED IN DEPARTMENT OF TOWN CLERK OR CLERK

**Registration of Electors.**—Under sect. 12 of the Representation of the People Act, 1918 (a), the clerk of the county council is usually the registration officer for a parliamentary county, and for a parliamentary borough the town clerk of a municipal borough is usually the registration officer. But under sect. 16 of the Act the clerk of an U.D.C. may be the registration officer for a parliamentary borough. The expenses of the registration of electors for the parliamentary county or borough, including reasonable charges for trouble, care and attention, on a scale fixed by the Treasury, are paid under sect. 15 by the council of which the registration officer is an officer, subject to contributions by other councils in exceptional cases, and to a Government contribution of one-half the amount paid by a council. By sect. 15 (3) any fees or other sum received by a registration officer in respect of his duties, other than sums paid to him for registration expenses, must be

accounted for and paid over to the rate fund of the area by the officer. In consideration of the officer's services in this matter, he generally receives an increased salary.

Where registration fees are retained for his own use by the town clerk of a metropolitan borough, they form part of his emoluments as town clerk and should be included in the calculation of his superannuation allowance (b). See also titles **REGISTRATION OFFICER** and **SUPERANNUATION**. [965]

**Election Fees.**—Similarly, fees may be paid to the clerk of a county council, town clerk, or clerk of an U.D.C., under sect. 29 of the Representation of the People Act, 1918 (c), for acting as returning officer at a parliamentary election. These fees are wholly payable from Government funds. [966]

As respects local elections, the clerk of the county council may or may not be appointed returning officer, at elections of county councillors, under sect. 14 of L.G.A., 1933 (d). If a borough is not divided into wards the mayor is usually the returning officer under sect. 28 (1) of the same Act (e), at an election of borough councillors, but at a ward election, an alderman assigned by the council is usually returning officer, see sect. 28 (2). In both classes of election, the town clerk is usually appointed deputy returning officer and is paid a fee for the work. At an election of urban or rural district councillors the clerk of the council is usually the returning officer (f).

Where an officer acts as returning officer or deputy returning officer at an election, the question whether his fee for the work done should be paid over to the council depends on the terms of his appointment, but usually these fees are excluded from this condition. See also title **RETURNING OFFICER**. [967]

**Local Land Charges.**—The Land Charges Act, 1925, prescribes a system of registration of local land charges (see title **LOCAL LAND CHARGES**). Sect. 15 (1) of the Act (g) lays down that a local land charge is to be registered in the prescribed manner by the proper officer of the local authority. Sect. 15 (6) empowers rules to be made under the Act for prescribing the mode of registration of a general or specific charge, and for prescribing the proper officer to act as local registrar, and making provision as to official certificates of search to be given by him in reference to subsisting entries in his register.

Rules were duly made under the Act in 1925, but these rules have been repealed and re-enacted as regards all rules material for the purpose of this case by the Local Land Charges Rules, 1934, dated March 22, 1934 (h).

The following extracts from these rules are material :

**Rule 4 (1).**—“For the purpose of registering a local land charge, the proper officer to act as a local registrar shall be the clerk or the person for the time being who acts as clerk to the local authority in whose favour the charge is created, or by which it is enforceable.”

(b) *Stoke Newington Borough Council v. Richards*, [1930] 1 K. B. 222; Digest (Supp.).

(c) 7 Statutes 565.

(d) 26 Statutes 312.

(f) *Urban District Councillors Election Rules*, 1934, s. 1, and *Rural District Councillors Election Rules*, 1934, s. 1; S.R. & O., 1934, Nos. 545, 546.

(g) 15 Statutes 538.

(e) *Ibid.*, 319.

(h) S.R. & O., 1934, No. 285.

*Rule 17.*—“The fees payable for the registration, modification or cancellation of entries, and for searches and official certificates of search, shall be those specified in the Order set out in the Second Schedule hereto.” [968]

#### FEES PAYABLE TO PARTICULAR OFFICERS

The above are the main matters dealt with in the clerk's department, or other legal department in which fees are received. Below are set out matters in which fees are payable to particular officers of a council. In some instances, such as registrars of births, deaths and marriages, public analysts or public vaccinators, no salary may be paid, and the officer's remuneration may be wholly in the shape of fees. [969]

**Registrars of Births, Deaths and Marriages.**—Sect. 22 of the L.G.A., 1929 (i), enacts that all appointments of superintendent registrars and registrars of births, deaths and marriages to fill any vacancy occurring after April 1, 1930, shall be made as salaried appointments, and county and county borough councils are by sect. 24 required to prepare schemes for the registration of births, deaths and marriages, and for the appointment of officers on a salaried basis, *i.e.* all such officers will continue to take fees from the public, but will be paid a fixed salary. The present fees for giving notice of marriage are, in the ordinary way, by superintendent registrar's certificate 2s., by licence £2 2s., including 10s. stamp duty. There are no fees payable for the registration of a birth or death, although certain fees are payable upon the issue of certificates of births and deaths and marriages. By sect. 22 (3) of the Act of 1929, the officer must account for all fees received by him to the Registrar-General, who then decides what amount is payable to the employing council, whereupon the officer pays over that proportion to the council, and the remainder to the Registrar-General. See also titles REGISTRAR-GENERAL and REGISTRARS OF BIRTHS, DEATHS AND MARRIAGES. [970]

**Taxation of Costs by Clerk of Peace.**—Where any legal business has been performed for a non-county borough council, or urban or R.D.C., it is provided by sect. 242 of the L.G.A., 1938 (j), that the bill of costs incurred in work performed on behalf of the council, may be examined and allowed by the clerk of the peace, who is to be paid such fees as may be settled by the Master of the Crown Office.

Where an appeal from the decision of an assessment committee is made to quarter sessions, certain fees are payable to the clerk of the peace, who is generally clerk of the county council or town clerk. These are prescribed by rules (k) made by the Secretary of State under sect. 34 of the R. & V.A., 1925 (l). See also titles CLERK OF THE PEACE and COSTS. [971]

**Public Analyst.**—A fee of 10s. 6d. is payable to a public analyst in respect of each sample of food or drug procured by a sampling officer under sect. 17 of the Food and Drugs (Adulteration) Act, 1928 (m), and submitted to him for analysis. See also title ANALYST. [972]

(i) 10 Statutes 899.

(k) S.R. & O., 1927, No. 416; 14 Statutes 798.

(l) 14 Statutes 662.

(j) 26 Statutes 436.

(m) 8 Statutes 895.

## MISCELLANEOUS CHARGES

**Testing of Electrical Lines, Works and Meters.**—If the council are not electricity undertakers, they may appoint electricity inspectors under sect. 35 of the Electric Lighting (Clauses) Act, 1899 (*n*), for the inspection and testing of the electric lines and works and the certifying and examination of meters. By sect. 36 (2) of the Act (*o*), the fees to be taken by any such inspector may be prescribed by the council with the approval of the Electricity Commissioners, and are to be accounted for and applied as directed by the council, but under sect. 37 remuneration to the inspector may be paid by the council, either in addition to or in substitution for fees. See also title ELECTRICITY SUPPLY. [973]

**Examination of Gas Meters.**—A local authority who maintain a gas undertaking may charge fees for the examination and testing, with or without stamping, of meters under sect. 11 of the Gas Regulation Act, 1920 (*p*). See also title GAS. [974]

**Burial Grounds and Cemeteries.**—In both burial grounds and cemeteries, a table of fees to be paid to any minister or sexton performing any duties in connection with the burial ground or cemetery must be approved by the Secretary of State, under sect. 3 of the Burial Act, 1900 (*q*). See also titles BURIALS AND BURIAL GROUNDS, Vol. II. at p. 340; CEMETERIES, Vol. II. at p. 478; and CHAPLAINS, Vol. III. at p. 66. [975]

## RECEIPT OF FEES AS AFFECTING SALARIES OF OFFICERS

**Unauthorised Charges.**—By sect. 123 (2) of the L.G.A., 1933 (*r*), an officer of a county, county borough, county district or parish council, is forbidden, under colour of his office or employment, to exact or accept any fee or reward whatsoever other than his proper remuneration. If he contravenes this provision he is liable on summary conviction to a fine not exceeding £50. [976]

**Accountability of Officers.**—Sect. 120 of the L.G.A., 1933 (*s*), provides that every officer employed by any council above-mentioned, whether under that Act or any other enactment, shall at such times during the continuance of his office, or within three months after his ceasing to hold it, and in such manner as the council direct, make out and deliver to them, or as they direct, a true account in writing of all money and property committed to his charge and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom or to whom money is due in connection with his office, showing the amount due from or to each. It is the duty of every such officer to pay all money due from him to the treasurer of the county, borough, district or parish, as the case may be, or otherwise as the local authority may direct.

These provisions are enforceable by an order of a court of summary jurisdiction. [977]

(*n*) 7 Statutes 727.

(*o*) 7 Statutes 728.

(*p*) 8 Statutes 1289. For the scale of fees, see S.R. & O., 1922, No. 625.

(*q*) 2 Statutes 249.

(*r*) 26 Statutes 371.

(*s*) *Ibid.*, 370.

**Salaried Officers.**—It is unusual nowadays for the terms of an officer's appointment to allow the retention by him of fees received, except fees for acting as returning officer at elections or unless fees constitute the officer's sole remuneration. The tendency now is to pay all local government officers a fixed salary, and to cause all officers to pay all fees received by them to the employing council. The importance of sect. 120 of the Act of 1933 (*ante*), will therefore be realised. [978]

### LONDON

Most of the fees already mentioned are chargeable also in London, but the division of functions between the L.C.C. and the metropolitan borough councils differs in some respects from that between county councils and borough and district councils outside London, and the P.H. (London) Act, 1891, supplemented by various L.C.C. (General Powers) Acts, takes the place of the P.H.A., 1875, and amending Acts in force outside London.

Arrangements requiring a town clerk to pay all fees into the rate fund, in return for an inclusive salary, are commonly made.

Fees payable by owners or occupiers to the district surveyors will be found in the Fifth Schedule to the London Building Act, 1930 (t).

At an election of county councillors, the returning officer is appointed by the L.C.C. under sect. 75 (2) of the L.G.A., 1888 (u), and at an election of metropolitan borough councillors, the town clerk of the borough is usually the returning officer under rule 1 of the Metropolitan Borough Councillors Election Rules, 1931 (a). Fees for their services are payable to the returning officers, and the retention by them of the fees will depend upon the terms of the appointment as town clerk. [979]

(t) 23 Statutes 348.  
(a) S.R. & O., 1931, No. 22.

(u) 10 Statutes 746.

## FENCES

*See ROAD PROTECTION.*

## FERRIES

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*See also titles : ROADS CLASSIFICATION ;  
TRANSPORT, MINISTRY OF.*

**Legal Status of a Ferry.**—The term “ferry” is generally applied to any undertaking having as its object the carriage by boat, steamer, or floating platform, of persons, vehicles, goods, animals or other things across a river or a sheet of water. In most cases the owner of the ferry charges tolls, but there are ferries which are free.

In a strict legal sense, a public ferry is regarded as a franchise or exclusive right of carrying persons, vehicles, goods, animals, or other things over a river, lake or arm of the sea and of taking a toll for so doing ; it is a public highway of a special description, and its termini must be in places where the public have rights such as towns or vills, or highways leading to towns. The right of the grantee is in the one case the exclusive right of carrying from town to town, and in the other of carrying from one point to the other all who are going to use the highway to the nearest town or vill to which the highway leads on the other side (a). [980]

A public ferry is really a continuation of a public highway across a river or other water, for the purpose of public traffic, from the termination of land on the one side to its recommencement on the other (b).

The right to a ferry is wholly unconnected with the ownership or occupation of land, as the ferry owner does not occupy the highway over the water but has merely a right to make a special use of it (c). The title is not like that of an easement since there is neither a dominant nor a servient tenement (d) ; it is simply a title to an incorporeal hereditament which exists in gross (e). The transfer of a lease of a ferry can be effected only by deed or by Act of Parliament. [981]

**Creation.**—The Crown from time to time granted rights of ferry, and all ancient ferries have their origin in Royal Grant or in prescription

(a) *Huzzey v. Field* (1835), 2 Cr. M. & R. 432 ; 24 Digest 979, 112.

(b) *Simpson v. A.-G.*, [1904] A. C. 476, 490 ; 24 Digest 970, 35 ; *Letton v. Goodden* (1866), L. R. 2 Eq. 123, 130 ; 24 Digest 970, 34.

(c) *Peter v. Kendal* (1827), 6 B. & C. 703 ; 24 Digest 981, 150.

(d) *Newton v. Cubitt* (1862), 12 C. B. (N. S.) 32 ; 24 Digest 968, 13.

(e) *Mayfield v. Robinson* (1845), 7 Q. B. 486 ; 24 Digest 969, 25.

which implies a Royal Grant (*f*). There are also ferries which were created by local Act of Parliament, and generally ferries can be divided into two classes based upon the manner of their creation, namely ancient ferries and statutory ferries. The rights and duties of both ferry owners and ferry users depend very largely upon the class to which a particular ferry belongs. [982]

**Rights and Duties Concerning Ancient Ferries.**—The owner of an ancient public ferry in the widest sense of the term is under an obligation to maintain it, and to provide a safe landing place for passengers, animals and goods, and he is liable for any damage caused by his neglect to do so. He is, in effect, "chained to his oar," he must give attendance at due times, keep the boats in order, and take but reasonable toll (*g*).

The owner is liable to be indicted and fined if he does not keep his ferry in readiness and in good repair (*h*), and the Crown may annul the grant of a non-statutory ferry or vest it in another person, although this course is rarely adopted.

The building of a bridge by a ferry owner does not, of itself, relieve him of his obligation to maintain the ferry (*i*).

The liability of a ferry owner in respect of the carriage of goods is similar to that of a common carrier (*k*). [983]

It is a question of fact whether the owner undertakes to land goods as well as to carry them; such a contract cannot be implied merely from the fact that the boat is a ferry boat (*l*). In either case, however, the owner must provide a safe landing place and is liable for any loss or damage caused by his default, unless he has been relieved of liability by conditions brought to the notice of the owner of the goods (*m*).

The ferry owner is not under any obligation to run the boat under dangerous conditions, e.g. in dense fog, but if he does so he becomes responsible for any injury occasioned by his action (*n*). [984]

**Right to Tolls.**—The owner of an ancient ferry has the right to demand and receive reasonable tolls and to vary such tolls, unless the toll is fixed by the grant, but the determination of what is a reasonable toll appears to be a question for the court, whose aid can be sought by the Crown or a private individual (*o*). Where there exists a custom to carry the inhabitants of a town free, it is illegal to demand a toll (*p*). Servants of the Crown are entitled to use ancient ferries without payment of toll (*q*).

Where a toll imposed is reasonable, the owner of a ferry has a right to resist a forcible evasion of it (*r*). [985]

(*f*) *Letton v. Goodden* (1866), L. R. 2 Eq. 123, 130; 24 Digest 970, 34; and see *Layzell v. Thompson* (1926), 91 J. P. 89; Digest (Supp.).

(*g*) *Hamerton v. Dysart (Earl)*, [1916] 1 A. C. 57, at p. 103; 24 Digest 974, 66.

(*h*) *Nedeport (Prior) v. Weston* (1443), Y. B. 22 Hen. VI., fo. 14, pl. 23; 24 Digest 978, 104.

(*i*) *Payne v. Partridge* (1690), 1 Salk. 12; 24 Digest 975, 87.

(*k*) *Southcote's Case* (1601), 4 Co. Rep. 83 b.; 24 Digest 976, 95.

(*l*) *Walker v. Jackson* (1843), 10 M. & W. 161; 24 Digest 976, 100.

(*m*) *Willoughby v. Horridge* (1852), 12 C. B. 742; 24 Digest 977, 101; *Dibden v. Skirrow*, [1907] 1 Ch. 437, affirmed, [1908] 1 Ch. 41; 24 Digest 971, 43; *Walker v. Jackson, supra*.

(*n*) *The Lancashire* (1874), 29 L. T. 927; 24 Digest 977, 102.

(*o*) *Stamford Corp. v. Paxlett* (1830), 1 Cr. & J. 57; affirmed (1831), 1 Cr. & J. 400 (Ex. Ch.); 33 Digest 541, 192, as to a fair or market.

(*p*) *Payne v. Partridge, supra*.

(*q*) *A.G. v. Londonderry Bridge Commissioners*, [1903] 1 I. R. 389; 24 Digest 974, f.

(*r*) *Robinson v. Balmain New Ferry Co., Ltd.*, [1910] A. C. 295; 24 Digest 975, 72.

**Ferry not a Monopoly.**—The right of a ferry owner is not that of a monopoly in the legal sense of the term (*s*), and accordingly the building of a bridge across a ferry does not entitle the ferry owner to recover damages as the result of loss of passengers. Within the limits of an ancient ferry, however, no one but the owner may lawfully carry traffic across the water (*t*), unless it is new traffic and differs from that carried by the owner of the ancient ferry (*u*). [986]

**Statutory Ferries.**—The owner of a statutory ferry has generally only such rights and duties as are created by the Act of Parliament which vested the ferry in the owner, and a reference to the particular statute by which the ferry was created is necessary, as there are no general principles governing all statutory ferries. It may be argued that a different position arises where by statute an ancient ferry is transferred from its owner to some one else, and that in such a case the owner of the statutory ferry has the same rights and obligations as attached to the owner of the ancient ferry, except in so far as such rights and obligations were altered by the statute. In most cases, however, the rights and obligations of a transferee by statute are those mentioned in the statute and those necessarily flowing therefrom.

A statutory ferry may be a simple monopoly without any compensation to the public and without any obligation to provide boats or boatmen for the convenience of the public. The statute may be merely an enabling one without conferring an exclusive right of ferry (*a*). Such a ferry has not the obligations which belong to an ancient ferry (*b*). The owner is not chained to his oar and can, it is submitted, unless there is a definite provision to the contrary in the statute under which he derives his rights, suspend the running of the ferry at any time and lay down conditions under which passengers and goods will be carried when the ferry is run during dense fog or in heavy seas. The position of the owner under the Act may be very different from that of the grantee of a franchise of ferry who is bound to have his ferry always ready (*c*). The statute may, however, give some rights similar to those attached to a Royal Grant of the franchise of a ferry, *e.g.* an express prohibition against the setting up of a rival ferry (*d*).

A local Act establishing a ferry or vesting a ferry in a person or body may contain provisions allowing the owner to lease or sell the ferry, to provide such steam and other boats, materials and things, and to employ and recompense such persons as are necessary for the proper and efficient working of the ferry. Power is granted to demand and receive for the use of the ferry, and the conveyance of passengers, vehicles, goods, animals and things, tolls not exceeding those mentioned in the Act, but in recent years owners of ferries have by local Acts obtained power to demand and receive such tolls, rates and charges as may from time to time be approved by the Minister of Transport.

(*s*) *R. v. Cambrian Railway Co.* (1871), L. R. 6 Q. B. 422; 24 Digest 968, 11.

(*t*) *Nedepot (Prior) v. Weston* (1443), Y. B. 22 Hen. VI. fo. 14, pl. 23; 24 Digest 978, 104.

(*u*) *Hammerton v. Dysart (Earl)*, [1916] 1 A. C. 57; 24 Digest 974, 66.

(*a*) *Londonderry Bridge Commissioners v. M'Keever* (1891), 27 L. R. Ir. 464; 24 Digest 978, 104 *v.*

(*b*) *Letton v. Goodden* (1866), L. R. 2 Eq. 128; 24 Digest 970, 34.

(*c*) *Bournemouth-Swanage Motor Road and Ferry Co. v. Harvey & Sons*, [1930] A. C. at p. 555; Digest (Supp.).

(*d*) *North and South Shields Ferry Co. v. Barker* (1848), 2 Ex. Ch. 136, 147; 24 Digest 968, 6.

Some local Acts contain a provision that ferry tolls shall be at all times charged equally to all persons and after the same rate in respect of all passengers, vehicles, goods, animals and things of a like description conveyed under like circumstances, and that no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person using the ferry. The issue of contract tickets and similar concessions is usually provided for by the statute.

Other matters generally dealt with in such Acts are the provision of means for settling disputes as to the amount of tolls chargeable, and the weight, quality or nature of any articles carried, the recovery of penalties for frauds, and the framing of regulations dealing with the times of arrival and departure of boats, the embarking and disembarking of passengers, the loading and unloading of vehicles, the maintenance of order and decorum, and other matters relating to the running of the ferry. [987]

Power is usually granted to provide such warehouses, sheds and other buildings, works and conveniences, as the owner may think necessary for the storage and accommodation of vehicles, animals and goods. The modern ferry often differs greatly from a ferry established by Act of Parliament many years ago; steamers, carrying hundreds of passengers and heavy motor vehicles, have replaced rowing boats and sailing boats; floating roadways and landing stages have replaced rough tracks and platforms; and large workshops, garages, bicycle rooms and offices have replaced primitive shelters and warehouses. These improvements are incidental to and consequent upon those things which the Legislature had authorised, and they became necessary as the result of the development of towns near ferries. It would appear that a ferry owner has power to provide such facilities as being necessarily or reasonably incidental to the exercise by him of his statutory powers (e).

The point sometimes arises as to whether or not the owners of a ferry can recover tolls from the Crown in respect of H.M. servants. It is admitted that *prima facie* His Majesty in respect of his servants is not liable to toll, unless there is something in an Act of Parliament which either expressly or impliedly imposes that liability upon the Crown (f). The mere fact that an exemption is found in an Act imposing the right to collect tolls in respect of some particular branch of H.M. service or a particular class of H.M. servants does not, *prima facie*, entitle the owners of the ferry to say impliedly that the Crown has given up its whole right to exemption (f).

Acts of Parliament establishing ferries, or vesting existing ferries in a new owner, usually contain provisions exempting from tolls certain classes of persons in the service of the Crown when on duty (g), but it is a matter of construction in each case as to how far exemption can be allowed (h).

In some local Acts the hours during which a ferry is to be worked, and the interval between each trip, are prescribed, but generally the owner has a discretion. [988]

(e) *A.-G. v. Smethwick Corpn.*, [1932] 1 Ch. 562; Digest (Supp.); *A.-G. v. Racecourse Betting Control Board*, [1935] 1 Ch. 34; C. A.; Digest (Supp.).

(f) *A.-G. v. Cornwall County Council* (1933), 97 J. P. 281; Digest (Supp.).

(g) Ferries (Acquisition by Local Authorities) Act, 1919, s. 4; 8 Statutes 660.

(h) *A.-G. v. Cornwall County Council, supra*.

**Extinguishment of a Ferry.**—In early days a non-statutory ferry could be extinguished by the Crown (*i*), but a ferry is now generally extinguished by an Act of Parliament. [989]

**Powers of a Local Authority to Run or Control Ferries.**—These powers are very similar to those of a private individual. A local authority owning an ancient ferry is in the same position as an individual who owns a similar ferry, but generally they obtain power to acquire, work and maintain a ferry by means of a local Act or, since 1919, by obtaining a consent from the Minister of Transport (*k*).

In order to ascertain the rights and duties of a particular council in connection with a ferry vested in or acquired by them, reference must be made to the particular local Act, and, further, it may be necessary to ascertain whether or not the ferry was, before the Act, an ancient one. Generally the provisions are similar to those contained in statutes dealing with ferries not owned by a council, but numerous special provisions are to be found in different Acts; for instance, a definite obligation to maintain a service of steamers at certain intervals for a period of years unless prevented by causes beyond the control of the council, and usually special financial provisions dealing with the application and disposal of moneys in the ferry account of the council. [990]

A local Act authorising the acquisition of a ferry usually makes provision for the borrowing by the council of the necessary money, and prescribes that the cost of establishing, working, regulating and managing the ferry shall be paid out of, and the receipts arising therefrom shall be carried to, the rate fund of the council. The keeping of a separate account of receipts and expenditure for the ferry undertaking is made obligatory, and provisions are inserted with regard to the application of revenue, and to the making good of deficiency in the receipts or revenue.

By recent local Acts all moneys received on account of the revenue of trading undertakings—including ferries—of a council are to be carried to and form part of the revenue of the rate fund, out of which all payments and expenses made and incurred in respect of the undertaking are met. Power has also been obtained to apply money received on account of the ferry undertaking in the construction, renewal, extension and improvement of works and conveniences for the purpose of the undertaking. [991]

Recent Acts also place upon councils the duty of keeping both capital and revenue accounts in such a way as to show, in some detail, expenses on various services and the general financial position of the undertaking. Local authorities have also been given power to provide (1) reserve funds not exceeding a certain proportion of the aggregate capital expenditure of the undertaking which they may utilise for meeting a deficiency, an extraordinary claim or demand, or the cost of renewing, improving or extending the undertaking, and (2) insurance funds which can be used for meeting losses, damages, costs and expenses arising from fires, accidents, explosions, collisions and other calamities.

A duty has also been placed by recent Acts upon councils who own a ferry undertaking to send copies of their accounts and balance sheets annually to the Minister of Transport. Also sect. 16 of the General Pier and Harbour Act, 1861, Amendment Act, 1862 (*l*), allowing the

(*i*) *Payne v. Partridge* (1690), 1 Salk. 12; 24 Digest 975, 87.

(*k*) Ferries (Acquisition by Local Authorities) Act, 1919; 8 Statutes 660.

(*l*) 18 Statutes 116.

Minister on complaint to appoint an auditor to audit and examine such accounts, has been applied by local Acts.

So far as tolls generally are concerned, the modern provision is one which enables the council to demand and receive, for the use of a ferry, tolls, rates and charges not exceeding those which may from time to time be approved by the Minister of Transport. [992]

Applications by councils for sanction to borrow capital sums required for a statutory ferry undertaking (e.g. to purchase a new steamer) are made to the Minister of Health who, before he issues a sanction, obtains the concurrence of the Minister of Transport.

By sect. 1 of the Ferries (Acquisition by Local Authorities) Act, 1919 (m), a county council, a county borough or borough council, or the council of any urban or rural district are empowered, with the consent of the Minister of Transport, to acquire, by agreement with the owner, any existing ferry which is within the area of the council or which serves the inhabitants of that area. The council are then entitled to work, maintain and improve the ferry, subject to (1) the provisions of any Act of Parliament under which the ferry was established; (2) Crown rights; and (3) the rights of any other persons. The Minister of Transport is authorised to approve the tolls or to allow the council to free the ferry from tolls. The Minister of Transport is given power by sect. 1 (5) of the Act of 1919, to hold local inquiries for the purposes of the Act; and by sub-sect. (7) of sect. 290 of L.G.A., 1933 (n), that section is extended to any local inquiry so held.

Most of sect. 1 (8) of the Act, relating to borrowing by councils, has been repealed (except as to London) by L.G.A., 1933, and a council will now borrow under the remainder of the sub-section and sect. 195 of the Act of 1933 (o), with the consent of the sanctioning authority, who in this instance is the M. of H. (p).

By sect. 1 (3) of the Act of 1919 a council may join with any other council for the acquisition, working, maintenance or improvement of an existing ferry in the area of either council or serving the inhabitants of either area, or may contribute to expenses incurred for these purposes by another council. [993]

By sect. 2 of the Act, any council acquiring a ferry under the Act must make such regulations as may be approved by the Minister of Transport for the protection from injury of passengers and the general public.

Sect. 4 of the Act of 1919 (q), provides that without prejudice to any existing right of His Majesty, and save as provided in the Army Act (r), nothing in the Act shall authorise any tolls to be demanded or received from any person when on duty in the service of the Crown, or for any animal, vehicle, or goods the property of, or when being used in the service of, the Crown, or returning after being so used, or from any police officer acting in the execution of his duty, or for any mail bag.

A council owning a ferry may under sect. 85 of the L.G.A., 1933 (s), appoint a committee to manage the undertaking, and may delegate to that committee any functions exercisable by the council in connection with such undertaking, except the power of levying, or issuing a precept for a rate or of borrowing money. Such a committee may

(m) 8 Statutes 660.

(n) 26 Statutes 460.

(o) *Ibid.*, 412.

(p) See s. 218 of the Act of 1933; 26 Statutes 424.

(q) 8 Statutes 661.

(r) See s. 148 of the Army Act; 17 Statutes 208.

(s) 26 Statutes 352.

include persons who are not members of the council, but at least two-thirds of the members of the committee must be members of the council. [994]

**Special Statutory Provisions.**—Under the Merchant Shipping Act, 1894, every ferry boat to which the term vessel or ship as defined by that Act applies must, if it is a British ship and is over 15 tons burden, be registered (*t*). By sect. 271 of the Act (*u*), every passenger ferry steamer carrying more than twelve passengers must be surveyed at least once a year by the Board of Trade and must not be used for carrying passengers unless the master or owner has a certificate of survey.

By sect. 503 of the same Act (*v*), as extended by later Acts, the owner of a ferry boat is granted a limitation of liability in certain cases of loss of life or damage. The aggregate amount of damages in respect of loss of life or personal injury, whether accompanied by other losses or not, cannot exceed £15 for each ton of the ship's tonnage; and in respect of loss of, or damage to vessels, goods, or other things, whether accompanied by loss of life or personal injury or not, £8 a ton.

By sect. 4 and the First Schedule to the Roads Act, 1920 (*a*), the definition of "roads" in sect. 8 (5) of the Development and Road Improvement Funds Act, 1909 (*b*), was extended so as to include "road-ferries," and by those Acts important powers are given to the Minister of Transport in connection with the construction and improvement of road-ferries. By sect. 17 of the M. of T. Act, 1919 (*c*), the Minister was given power to make advances for, *inter alia*, the construction, improvement or maintenance of ferries, and in sect. 11 of the Roads Improvement Act, 1925 (*d*), the word "road" was defined as including any "road, ferry and footway," although this would appear to be a misprint for "road-ferry and footway." [995]

**Rating of a Ferry.**—As previously stated the right to a ferry is wholly unconnected with the ownership or occupation of land, and tolls are incorporeal property. Generally, rates are payable by the occupiers of land, houses and other property, and it has been established that tolls are not, *per se*, rateable (*e*). In the early cases which established this principle the court regarded the tolls as a payment for the use of the boats, but it was held in 1852 (*f*), that, where a company owning a statutory ferry had constructed landing places with toll-houses and gates, although the tolls could not properly be brought into the calculation as the profits of the occupation of the landing place, the existence of the tolls could not be wholly excluded from consideration, and that the value of the land should be taken at its value as enhanced by being available for the purpose of earning tolls.

It would appear, therefore, that the occupier of a ferry plying between two points, without having any interest in the land at either, other than, for instance, a right to pass along the highway, cannot be rated in respect of the ferry tolls received by him (*g*). Generally, however, there must be possession of part of the soil to create rateable

(*t*) See s. 3 of the Act; 18 Statutes 163.

(*u*) 18 Statutes 261.

(*v*) 18 Statutes 355.

(*a*) 19 Statutes 88.

(*b*) 9 Statutes 212.

(*c*) 3 Statutes 435.

(*d*) 9 Statutes 228.

(*e*) *R. v. Nicholson* (1810), 12 East, 330; 24 Digest 983, 162; *Williams v. Jones* (1810), 12 East, 346; 24 Digest 983, 161.

(*f*) *R. v. North and South Shields Ferry Co.* (1852), 1 E. & B. 140; 24 Digest 983, 165.

(*g*) *Williams v. Jones, supra.*

occupation, and if, as is the case so far as the larger modern ferries are concerned, the owner of the ferry occupies land and has, at either side or both sides of the ferry, such facilities as landing stages, floating roadways, offices, workshops, garages and shops, then the ordinary principles of rating have to be applied, unless by statute the ferry undertaking is exempt from paying rates (*h*). [996]

The method of valuing, for rating purposes, a ferry in the occupation of an individual, a partnership, or a limited liability company is that generally applicable to commercial undertakings, subject to the observations made above with regard to the fact that tolls cannot as such be rated. An examination of the accounts of the undertaking should disclose whether or not sufficient data are available from which a reasonable assessment can be made having regard to the capital necessary to run the business. If sufficient profits are not disclosed, the "contractor's" method could be applied, the assessment being a percentage on the value of the land and buildings used in the undertaking. The rent which a hypothetical tenant might pay is, in effect, ascertained.

So far, however, as the valuation of a ferry undertaking owned or occupied by a local authority or by two or more local authorities jointly is concerned, the circumstances may differ from those governing a commercial undertaking; for instance, a ferry may be run simply for the benefit of the public generally and without any intention of making a profit. The ferry may be toll-free or may be run in such a way as to be only self-supporting without giving any direct financial profit to the owner or occupier. Each case should, it is submitted, be treated on its merits; a ferry is usually a fairly extensive public utility undertaking, often situate in more than one rating area, and requires special consideration in the interest of uniformity of valuation (*i*). [997]

**London.**—The Metropolitan Board of Works (Various Powers) Act, 1885 (*k*), empowered the Metropolitan Board of Works to provide a free ferry across the Thames at Woolwich, landing places, approaches and other necessary works, vessels "propelled by steam or otherwise," and to convey passengers, animals, vehicles and goods free of all tolls, rates or charges. Power was also given to make bye-laws in regard to the ferry.

The times during which the ferry was to run were also provided for, but, under the Thames Tunnel (North and South Woolwich) Act, 1909 (*l*), the times were altered as from the completion of the subway to be built by virtue of that Act.

By sect. 40 (8) of the L.G.A., 1888 (*m*), the powers, property and liabilities of the Board of Works were transferred to the L.C.C.

Sect. 39 of the L.C.C. (General Powers) Act, 1892 (*n*), enables the council from time to time to procure any of its servants to be sworn in as constables for the purpose of enforcing the council's bye-laws and regulations relating to the ferry.

(*h*) See e.g. The Torpoint Ferry Act, 1790 (30 Geo. 3, c. 61); cf. s. 41 of the Mersey Tunnel Act, 1925, as extended by amending Acts in 1927 and 1928 (15 & 16 Geo. 5, c. ex.; 17 & 18 Geo. 5, c. xciii.; 18 & 19 Geo. 5, c. iii.), which provides that the tunnel, approaches, carriageways, footways, toll gates, etc., shall not be assessed to any local rate.

(*i*) Representations of the Central Valuation Committee, 1934, p. 25 *et seq.*

(*k*) 48 & 49 Vict. c. clxvii.

(*m*) 10 Statutes 719.

(*l*) 9 Edw. 7, c. lxvii.

(*n*) 11 Statutes 1112.

Sects. 5 to 7 of the London County Council (General Powers) Act, 1894 (*o*), provide for special penalties and for powers of inspection, search and arrest in regard to breaches of the bye-laws as to explosives, etc., at the ferry.

The Woolwich free ferry has hitherto been deemed a Class I. road for the purpose of Exchequer grants. It is not assessed for rating purposes.

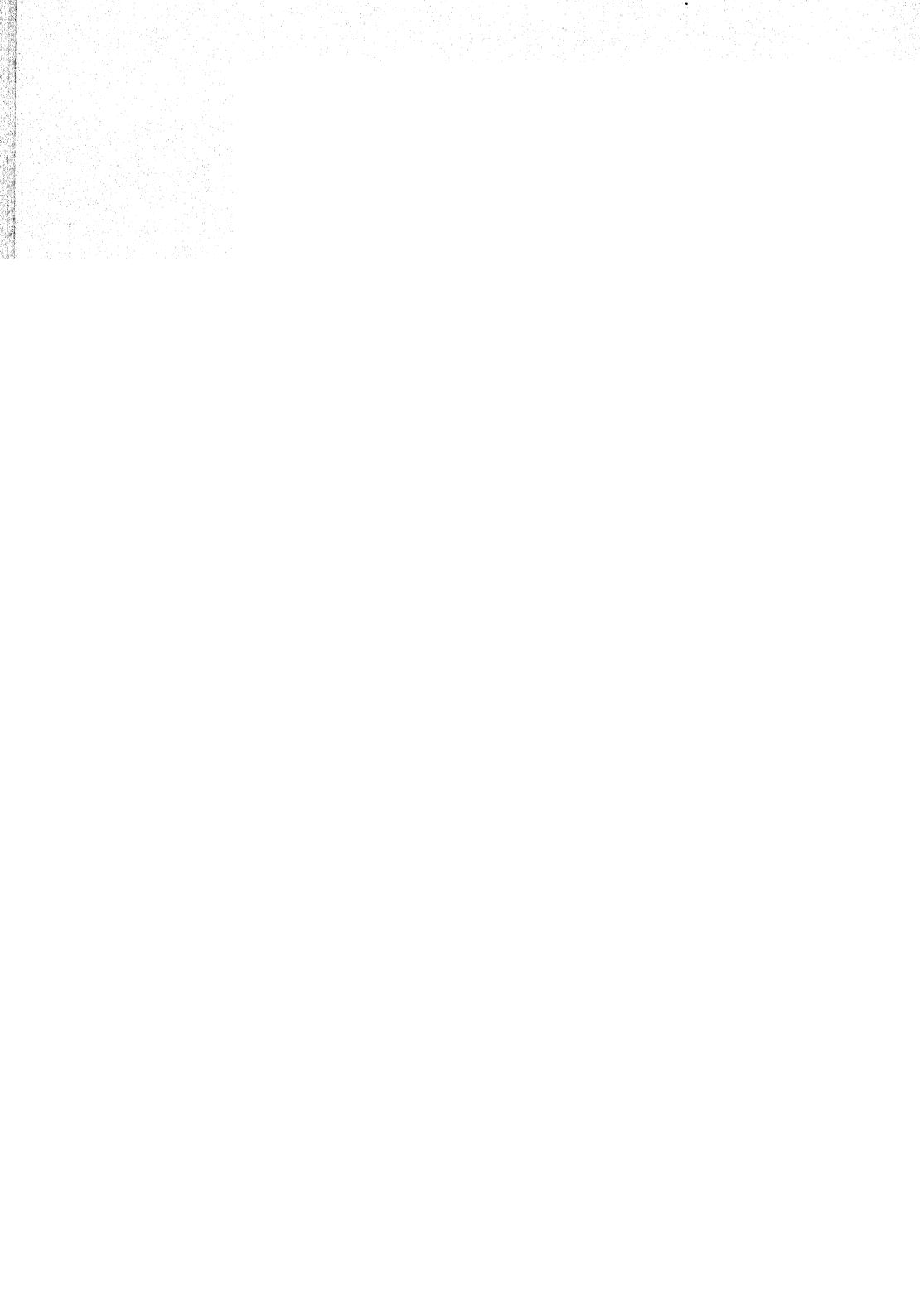
The Ferries (Acquisition by Local Authorities) Act, 1919 (*p*), applies to London, and the L.C.C. are the local authority for that Act. Sect. 1(7), (8) (which deal with expenses and borrowing) remain unrepealed so far as London is concerned. [998]

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(*o*) 11 Statutes 1119.

(*p*) 8 Statutes 680.

[END OF VOL. V.]



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